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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,
Petitioners

v.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

GREGORY M. HARVEY*
GEORGE W. MCKEAG
ELIZABETH L. HOOP
2000 One Logan Square
Philadelphia, PA 19103
(215) 963-5000

Of Counsel:

MORGAN, LEWIS & BOCKIUS

DUNCAN S. MACAFFER
112 State Street—Suite 1220
Albany, New York 12207
(518) 462-4414

Attorneys for Petitioners

*Counsel of Record

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

QUESTION PRESENTED

Does an injunction issued by a state court against the exercise of control over local church property by a hierarchical religious denomination constitute impermissible judicial intrusion into the government and internal administration of a hierarchical church in violation of the First and Fourteenth Amendments where the express provisions of the denomination's constitution place the local property under control of the denomination?

PARTIES TO THE PROCEEDING

Petitioners herein are The United Presbyterian Church in the United States of America, an unincorporated religious denomination, and the Presbytery of Albany, an unincorporated judicatory of the denomination. Respondents are the First Presbyterian Church of Schenectady and four individuals, Herbert S. Mekeel, Michael R. Alford, Robert V. Klint, and William T. Lanier, who were the Minister, Associate Minister, and two members of the session, respectively, of the First Presbyterian Church of Schenectady prior to February 1, 1977, when petitioner the Presbytery of Albany replaced the session of the First Presbyterian Church of Schenectady and dissolved the pastoral relationships between the First Presbyterian Church of Schenectady and respondents Mekeel and Alford.

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FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, *et al.*,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

The United Presbyterian Church in the United States of America and the Presbytery of Albany respectfully petition for a writ of certiorari to review the judgment of the Court of Appeals of New York in the above-entitled case.

OPINIONS BELOW

The opinion of the Court of Appeals of New York, (App. A-1), is reported at 62 N.Y.2d 110, 476 N.Y.S.2d 86, and 464 N.E.2d 454. The Order of the Court of Appeals of New York denying rehearing, (App. A-41), is not reported. The opinion of the Supreme Court of New York, Appellate Division, (App. A-24), is reported at 92 A.D.2d 164 and 461 N.Y.S.2d 903. The opinion of the Supreme Court of New York, Saratoga County, (App. A-16), is not reported.

JURISDICTION

The judgment of the Court of Appeals of New York was entered on May 15, 1984. The Order of the Court of Appeals of New York denying a timely petition for rehearing was entered on July 5, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof***.

U.S. Const., Amend. XIV, Sec. 1:

> ***nor shall any State deprive any person of life, liberty, or property, without due process of law***.

STATEMENT OF THE CASE

In this petition the United Presbyterian Church in the United States of America ("the United Presbyterian Church") and the Presbytery of Albany, one of its denominational tribunals, seek review of a decision of the Court of Appeals of New York which in violation of the First and Fourteenth Amendments enjoins the United Presbyterian Church and its tribunals from governing a

particular (local) United Presbyterian Church in accordance with church law expressly set forth in the denomination's constitution ("the Constitution"), and which is thereby contrary to the decisions of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), and in *Jones v. Wolf*, 443 U.S. 595 (1979), this Court's most recent decision regarding the resolution of church property disputes.

This action arises out of an attempt by the majority of the members of the First Presbyterian Church of Schenectady ("the First Presbyterian Church"), who have doctrinal differences with the United Presbyterian Church, to sever unilaterally (that is, without permission of the denomination) the church from the United Presbyterian Church and to take with them the local church property. The decision of the Court of Appeals prohibits the denomination from replacing the leadership of the local church and exercising control over the local church property as provided in the Book of Order, that part of the two-volume Constitution that sets forth the form of government of the United Presbyterian Church.

The presbyterian form of church government is characterized by ascending levels of tribunals, referred to as "judicatories," in which a "presbytery" composed of both clergy and laymen performs the functions of a bishop. The lowest judicatory is the "session" of each particular church, which is composed of the ministers and ruling elders (laymen who are ordained to the position of elder) of the particular church. Each particular church is under the authority and jurisdiction of a presbytery, the next higher judicatory, which is composed of ministers and elders representing all the particular churches in a certain geographic area. Three or more presbyteries are grouped under the jurisdiction of the next higher judicatory, which is known as a "synod." The highest judicatory of the United Presbyterian Church is the

"General Assembly," which is composed of representatives elected by each presbytery. Actions of lower judicatories are subject to review and to correction by higher judicatories and appeals may be taken from lower judicatories to judicial commissions appointed by higher judicatories, which sit as courts. It is this ascending order of judicatories that has consistently caused the United Presbyterian Church to be recognized as "hierarchical" by this Court and numerous state courts.

The presbytery is the basic unit of church government in the United Presbyterian Church. The Constitution provides that presbyteries have the power to form and to receive new churches; to dissolve, divide, or unite particular churches; to review and approve or require the correction of, the records of church sessions; and to receive, dismiss, ordain, and install ministers. Every particular church must be organized by a presbytery. A particular church must obtain written permission of its presbytery before it may sell or encumber its real property, before it may acquire real property subject to a condition, and before it may lease the real property it uses for worship or lease for more than five years any of its other real property. Where a presbytery has chosen to dissolve a particular church, the presbytery may dispose of as it wishes the property held by that particular church. In addition to these and other specific powers, each presbytery has general power to "take effectual care that [sessions of particular churches] observe the Constitution of the Church" and to "order whatever pertains to the spiritual welfare of the churches under its care."

At issue in the instant case is the presbytery's express power to appoint an administrative commission with the full powers of a session to replace the session of a particular church whenever the presbytery determines, after notice and a hearing, that the session of that particular church "is unable or unwilling to manage wisely the affairs of its church." Under the Constitution, the powers of session, and thus the powers of any such ad-

ministrative commission, include exclusive authority over local church buildings and property, subject to the authority of the higher judicatories.[1] It is this power of a presbytery to appoint an administrative commission with full powers of session over a local church and the power of that administrative commission to exercise the powers of a session that the Court of Appeals has enjoined.

The First Presbyterian Church has been a particular church of the United Presbyterian Church since at least 1770[2] and since that time has been under the care and jurisdiction of the Presbytery of Albany ("the Presbytery") and its predecessor presbyteries. On January 24, 1977, a majority of the members of the First Presbyterian Church voted in favor of a resolution that purported to "sever" or withdraw the church from the Presbytery and to retain control of all the church properties. The resolution was introduced by members who apparently believed that the United Presbyterian Church's support of certain political causes violated presbyterian doctrine.

On February 1, 1977, the Presbytery appointed an administrative commission with full powers of session to replace the session of the First Presbyterian Church and ordered that the session of the First Presbyterian Church "cease to act until directed otherwise by the Presbytery." This action reflected the determination of the Presbytery as a judicatory of a hierarchical denomination that the

1. Under the Constitution, each particular church is to form a nonprofit corporation to hold title to its real property. In 1803 the First Presbyterian Church formed such a corporation, which holds title to the real property at issue in the instant case. The Constitution provides that the session may delegate its responsibilities for the management of property to the trustees (the officers) of the nonprofit corporation, but that the trustees are always subject to the "superior authority and direction" of the session, and thus to the higher judicatories of the denomination.

2. Prior to 1958 the United Presbyterian Church was known as The Presbyterian Church in the United States of America. As a result of a denominational merger in 1983, the denomination is now known as Presbyterian Church (U.S.A.).

resolution to withdraw, which was proposed by the session of the First Presbyterian Church, violated church law, and that therefore the session was "unable or unwilling to manage wisely the affairs of its church."

Respondents did not appeal to the Synod of jurisdiction or to the General Assembly the action of the Presbytery in replacing the session of the First Presbyterian Church, but rather instituted this action seeking a declaratory judgment that the First Presbyterian Church is independent of the United Presbyterian Church and an injunction against any interference by the denomination and the Presbytery with respondents' use of the property. Petitioners counterclaimed, seeking an injunction against interference with the activities of the Presbytery, through its administrative commission, in maintaining the First Presbyterian Church as an ongoing United Presbyterian Church. The trial court dismissed respondents' request for declaratory relief and denied petitioners' counterclaim, but granted the permanent injunction sought by respondents. The Appellate Division of the New York Supreme Court reversed and granted petitioners' counterclaim.

The Court of Appeals of New York reinstated the Order of the trial court. Following the circular reasoning of the trial court the Court of Appeals properly denied respondents' request for declaratory relief, holding that to determine that the First Presbyterian Church is independent of the United Presbyterian Church would require a constitutionally impermissible inquiry with respect to whether respondents could unilaterally withdraw under church law, but nonetheless permitted an injunction to issue which prohibits the denomination from asserting express Constitutional authority over the First Presbyterian Church.

The Court of Appeals of New York denied petitioners' timely petition for rehearing on July 5, 1984, and this petition for a writ of certiorari followed.

The constitutional questions with respect to which petitioners seek review were first raised in opposition to a request for a preliminary injunction sought by the First Presbyterian Church in a prior federal court action involving some of the same parties as the instant case[3], were initially raised in the instant case in petitioners' Answer and Counterclaim to respondents' Complaint,[4] and have been pressed at every subsequent stage of this action.

REASON FOR GRANTING THE WRIT

A. The decision of the Court of Appeals of New York enjoins the United Presbyterian Church from the free exercise of religion as provided in the denomination's Constitution, and is directly contrary to this Court's decisions in *Serbian Eastern Orthodox Diocese v. Milivojevich*, *Kedroff v. Saint Nicholas Cathedral*, *Kreshik v. Saint Nicholas Cathedral*, and *Jones v. Wolf*.

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3. The First Presbyterian Church initially brought an action against the United Presbyterian Church in the U.S. District Court for the Northern District of New York requesting the same relief sought in the instant case. The District Court denied the local group's request for a preliminary injunction, ruling that the Presbytery had acted on authority conferred upon it by ecclesiastical law and that the Court was bound by the Presbytery's decision. *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F.Supp. 450 (N.D.N.Y. 1977).

4. "[P]ursuant to the religious rights of the defendants under the first amendment to the Constitution of the United States of America the court lacks jurisdiction to consider, hear or adjudicate any of the allegations of the plaintiffs' complaint having to do with the doctrine, dogmas, belief or tenets of faith of the United Presbyterian Church in the United States of America (UPCUSA) or any alleged departure from those doctrines, or to interfere in the internal ecclesiastical administration of the UPCUSA except to accept and enforce the decisions of the highest applicable judicatory as they may apply to civil matters affecting the property and civil rights of the parties to this action." (Fourth paragraph of petitioners' Answer and Counterclaim to respondents' Complaint).

The decision of the Court of Appeals of New York permanently enjoining the United Presbyterian Church and the Presbytery of Albany from "interfering" with respondents' use of the local church property prohibits the Presbytery from exercising its express power under the Constitution to replace the session of the First Presbyterian Church with an administrative commission with full powers of session and through that commission to control the use of the local church property at issue.

The specific section of the Form of Government, one of three parts of the Book of Order, pursuant to which the administrative commission was appointed provides as follows:

> Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

Form of Government, Chapter XI, Section 15 (referred to hereafter as "Section 15"). In the instant case, the Presbytery's decision that the session of the First Presbyterian Church was "unable or unwilling to manage wisely the affairs of its church" was based on the Presbytery's determination that the vote to withdraw violated church law. It is undisputed that the Presbytery followed the procedures, specifically, conducting an investigation and giving the session an opportunity to be heard, required by Section 15 before replacing the session with the administrative commission.

The Constitution specifically defines the powers of session, and thus the powers of any administrative com-

mission appointed under Section 15, to include exclusive authority over the use of buildings and property of the First Presbyterian Church and its financial and corporate affairs, as follows:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put*, but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session. . . .

Form of Government, Chapter XI, Section 7 (emphasis added).

> The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session. . . .

Form of Government, Chapter XI, Section 8.

The facts of the instant case place it squarely within this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). The dispute in *Serbian* arose when superior tribunals (the Holy Assembly of Bishops and the Holy Synod) of the Serbian Orthodox Church, a hierarchical denomination, replaced and defrocked a bishop and divided his diocese into three

parts, just as the Presbytery in the instant case replaced the session of the First Presbyterian Church. Under church law the bishop, like the session of a particular church of the United Presbyterian Church, controlled the church property. The defrocked bishop sought to enjoin the denomination from interfering with the Diocesan property (which, like the property at issue in the instant case, was held by nonprofit corporations). *Id.* at 709. The Supreme Court of Illinois invalidated the actions of the Holy Assembly and Holy Synod and in effect reinstated the bishop, ruling that the defrockment proceedings did not comport with the internal rules of the denomination and, purporting to apply a "neutral principles" rule, that the tribunals exceeded their jurisdiction in reorganizing the diocese. *Id.* at 708, 720-721. This Court reversed, holding that the Illinois Court had unconstitutionally substituted its own interpretation of the denomination's constitution and polity for the interpretation of the ecclesiastical tribunals:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-725.

In two earlier cases, *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), this Court had reversed decisions of the Court of Appeals of New York where the issue was which prelate was entitled to the use and occupancy of a cathedral in New York — the prelate appointed by the longstanding Moscow-based hierarchy

or the prelate appointed by a competing hierarchy more recently established in North America. This Court ruled that the states may not by legislation or by common law decision transfer hierarchical control of a denomination, and the attendant control over church property, from one group to another. The result of these decisions was to leave control of the cathedral under the Moscow-based hierarchy.

The ecclesiastical authority by which the Presbytery replaced the session of the First Presbyterian Church is as valid as the authority of the Holy Assembly of Bishops and Holy Synod recognized by this Court in *Serbian* and as the authority of the Moscow prelate recognized in the *Kedroff* and *Kreshik* decisions and should have been so recognized by the Court of Appeals.

The *Serbian*, *Kedroff*, and *Kreshik* decisions rely on the well-established doctrine of judicial deference to the internal decision-making of hierarchical religious denominations. The "deference rule" was first articulated as a matter of federal common law by this Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), a church property dispute, like the instant case, in the United Presbyterian Church. In *Watson v. Jones* this Court held that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories [of a hierarchical denomination] to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." 80 U.S. (13 Wall.) at 727.[5] Subsequent decisions

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5. There is no issue presented by the instant case with respect to whether or not the United Presbyterian Church is a "hierarchical" denomination. The Court of Appeals held, as did this Court in *Watson v. Jones* and as have many other state appellate courts, that the United Presbyterian Church has a hierarchical, as opposed to a congregational, polity. (App. A-2). *Accord Lowe v. First Presbyterian Church*, 56 Ill.2d 404, 308 N.E.2d 801, *cert. denied*, 419 U.S. 895 (1974); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa

of this Court held that the deference rule has constitutional standing under the First Amendment, *Jones v. Wolf*, 443 U.S. 595 (1979); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-449 (1969); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 115-116 (1952), and that the deference rule applies to issues relating to church government or polity as well as to questions of religious faith or doctrine. *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-710 (1976).

In *Jones v. Wolf*, this Court reaffirmed, all nine Justices concurring, that the deference rule is a constitutionally permitted approach, but also held (5-to-4) that states may choose to adopt the alternative "neutral principles" rule, in which the civil court looks only to certain documents, such as deeds, corporate charters, and denominational constitutions, to determine who is entitled to the local church property. In sanctioning the "neutral principles" rule, the majority in *Jones v. Wolf* recognized that there may be cases in which application of the "neutral principles" rule would be unconstitutional and where the deference rule followed in *Serbian*, *Kedroff*, and *Kreshik* would be the only permitted approach:

> [T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the

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NOTES *(Continued)*

1983); *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984); *Presbytery of Cimarron v. Westminster Presbyterian Church*, 515 P.2d 211 (Okla. 1973), *cert. denied*, 416 U.S. 961 (1974); *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, Pa. Commw. Ct. , 471 A.2d 1271 (1984); *Presbytery of Seattle v. Rohrbaugh*, 79 Wash.2d 367, 485 P.2d 615 (1971), *cert. denied*, 405 U.S. 996 (1972).

> interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

443 U.S. at 604. When a civil court determines to apply the "neutral principles" rule to resolve a church property dispute, it is required "to give effect to the result indicated by the parties [in the denominational constitution] provided it is embodied in some legally cognizable form." *Id.* at 606.

The Court of Appeals held in the instant case that under the decisions in *Serbian Eastern Orthodox Diocese v. Milivojevich* and *Kedroff v. Saint Nicholas Cathedral*, it was prohibited from granting the declaratory relief sought by respondents (a declaration that the First Presbyterian Church is independent of the United Presbyterian Church) because such a determination would require an impermissible "examination and interpretation of the authority of the Presbytery to permit or prevent withdrawal of a local church." (App. A-6). Having so held, the Court of Appeals in the first instance should have deferred to the Presbytery's determination and affirmed the decision of the Appellate Division granting petitioners' counterclaim and enforcing the authority of the administrative commission.

Instead, the Court of Appeals reinstated the order of the trial court dismissing respondents' request for declaratory relief and petitioners' counterclaim, but granting respondents an injunction against any interference by the United Presbyterian Church or the Presbytery of Albany in respondents' use of the local church property, thereby enjoining the United Presbyterian Church from exercising explicit provisions of its Constitution.

The Court of Appeals reasoned that it could rule on respondents' request for injunctive relief under the "neutral principles" rule without addressing what it rec-

ognized as being an impermissible question of which group is the lawful session under church law, because the vote to withdraw took place before the Presbytery replaced the session with an administrative commission. The fact that the congregational vote occurred prior to the Presbytery action has no significance, of course, unless the respondents could under church law unilaterally withdraw. Thus, although in denying respondents' request for declaratory relief the Court of Appeals held that it could not constitutionally inquire whether withdrawal is permitted under church law, in ruling on respondents' claim for injunctive relief the Court of Appeals assumed that respondents could withdraw and had done so prior to the Presbytery's replacing the session.

In applying the "neutral principles" rule, the Court of Appeals then refused to consider Section 15 on grounds that any inquiry into the meaning of that provision would entail an unconstitutional inquiry into doctrine and polity, (App. A-13), although the plain language of that section, read in connection with the sections granting the session exclusive authority over church property, is to place the presbytery, through its administrative commission, in control of the local property where, as here, the presbytery has acted to replace the session.[6] The result is a decision which denies the Presbytery and the administrative commission authority expressly granted in the Constitution and in effect reinstates the session that the Presbytery had replaced.[7] Having chosen to apply the "neutral

6. The dissent in *Jones v. Wolf* predicted that the "neutral principles" rule would produce the very problem seen in the Court of Appeals' opinion — that civil courts applying "neutral principles" would exclude from consideration so many provisions in church constitutions dealing with church polity that the result would be totally contrary to the form of church government chosen by the hierarchical denomination. 443 U.S. at 611-613 (Powell, J., dissenting).

7. The issue of which group constitutes the session of the local church was not present in *Jones v. Wolf* because the constitution of the Presbyterian Church in the United States, the denomination involved in *Jones v. Wolf* and in *Presbyterian Church in the United*

principles" rule, the Court of Appeals was required by the First Amendment to give effect, as stated in the majority opinion in *Jones v. Wolf*, to "the result indicated" in Section 15 by recognizing and enforcing the Presbytery's authority over the property at issue.[8]

The Court of Appeals also declined to consider Section 15 because, the Court stated, that provision is "located outside the property section of the Book of Order." (App. A-13). As a factual matter, the Court of Appeals is simply incorrect. There is no "property section" as such in the Book of Order applicable to this case. Section 15 is located in a chapter titled "Of the Session," which sets forth the composition and powers of sessions and also includes the sections stating the powers of sessions over property, quoted above. The provisions requiring written permission of the presbytery prior to the sale

States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, had no provision for presbyteries to replace local sessions with administrative commissions with full powers of session. (Nor did that constitution require presbytery approval prior to the sale, mortgaging, leasing, or encumbering of real property by particular churches, or give presbyteries control of the property of dissolved churches in all cases, as is provided in the Constitution of the United Presbyterian Church).

8. The Supreme Courts of California and South Dakota also have adopted the "neutral principles" rule and have awarded church property to members of local congregations that voted to withdraw from the United Presbyterian Church. *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App.3d 910, 152 Cal. Rptr. 854, *cert. denied*, 444 U.S. 974 (1979); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983). There are unreported decisions to the same effect by the Missouri Court of Appeals (now on appeal to the Missouri Supreme Court), the Ohio Court of Appeals, and an Illinois trial court. In none of those cases, however, was an injunction issued, or sought, against the denomination. The courts of Maryland, one of the first states to adopt the "neutral principles" rule, have consistently held in favor of the United Presbyterian Church in such disputes. *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984); *Calvary Presbyterian Church v. Presbytery of Baltimore*, 39 Md. App. 405, 386 A.2d 357 (1978).

of local church property and providing for presbytery control of the property of dissolved churches are located in the chapter titled "Of Incorporation and Trustees," which deals with the formation and operation of nonprofit corporations to hold title to real property. As a matter of law, hierarchical denominations are denied the protection traditionally afforded them by the First Amendment if provisions of their constitutions are to be ineffective merely because they are not located in the section in which a particular civil court would have placed them. This is particularly so with respect to a Constitution like that of the United Presbyterian Church, which was drafted in 1789 and has been expanded by a series of amendments made over the past 200 years.[9]

The decision of the Court of Appeals enjoins the United Presbyterian Church and the Presbytery of Albany from exercising the power expressly given to the Presbytery in the Constitution of the United Presbyterian Church to replace the session of the First Presbyterian Church with an administrative commission with exclusive authority over the property of the First Presbyterian Church. This result denies the United Presbyterian Church the free exercise of religion guaranteed by the First Amendment, which this Court has held encompasses the power of hierarchical religious denominations "to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine," *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-722 (1976), and is con-

9. The Court of Appeals also suggested that it did not consider Section 15 because sessions are described elsewhere in the Constitution as having purely "spiritual" power, that is, "ecclesiastical" power as opposed to civil penal power. (App. A-13). The Constitution states unequivocally, however, that the "ecclesiastical" powers of the church judicatories include power over property and over the affairs of the nonprofit corporations holding title to local church property. (Form of Government, Chapter XI, Sections 7, 8; Chapter XXXII, Sections 8, 11, 12).

trary to the First Amendment principles upheld by this Court in the *Serbian*, *Kedroff*, and *Kreshik* decisions, and in both the majority and dissenting opinions in *Jones v. Wolf*.

CONCLUSION

For all of the reasons set forth above, the United Presbyterian Church and the Presbytery of Albany respectfully urge this Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

GREGORY M. HARVEY
GEORGE W. McKEAG
ELIZABETH L. HOOP
2000 One Logan Square
Philadelphia, PA 19103

Of Counsel:
MORGAN, LEWIS & BOCKIUS

DUNCAN S. MacAFFER
112 State Street—Suite 1220
Albany, New York 12207

Attorneys for Petitioners

APPENDIX

STATE OF NEW YORK
COURT OF APPEALS

No. 177

FIRST PRESBYTERIAN CHURCH
OF SCHENECTADY, *et al.*,

Appellants,

v.

UNITED PRESBYTERIAN CHURCH IN THE
UNITED STATES OF AMERICA, *et al.*,

Respondents.

(177) W. Jack Williamson, Greenville, Ala., pro hac vice, & Robert S. Trieble, Ballston Spa, for appellants.
Duncan S. MacAffer, Albany, for respondents.

SIMONS, J.:

This action involves a dispute between plaintiff First Presbyterian Church of Schenectady (First Church), and its denominational church organization, defendant The United Presbyterian Church in the United States of America (UPCUSA). It arose when First Church withdrew from the denominational church because of a disagreement over UPCUSA's financial support of radical political groups and individuals. Plaintiffs seek a declaration of their independent status and a permanent injunction preventing defendants from interfering with plaintiffs' use and enjoyment of the local church property. The issue is whether the court may resolve the dispute between the parties as it would any other or must, consistent with the prohibition against church/state entanglement contained in the First Amendment to the United States Constitution, defer to the determination of the denominational church. We

hold that it may resolve the dispute and that plaintiffs are entitled to injunctive relief. We therefore reverse the order of the Appellate Division dismissing the complaint.

Prior to January 24, 1977, First Church was a member of defendant Presbytery of Albany and defendant UPCUSA. UPCUSA exhibits a hierarchical or connectional form of church government, as differentiated from a congregational form. Under the hierarchical system, authority is vested in the first instance in the governing body of the local church — the Session— but its actions are subject to review and control by higher church bodies, in ascending order of authority, the Presbytery, the Synod and the General Assembly. To contrast, a congregational type church is independent of higher church authority and is self-governing.

First Church was organized in 1760, during the colonial period, and first incorporated on January 14, 1803, pursuant to Chapter 79 of the Laws of 1801. It became a member of the Presbytery of Albany in 1770 and UPCUSA's predecessor denomination in 1789. It retained that status until January, 1977. During the 1970's members of the church's 440 person congregation expressed discontent with UPCUSA and petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied. Instead, defendant Presbytery appointed an administrative commission to investigate the activities of the Session of First Church and to file a report containing its findings and recommendations. On January 24, 1977, at its annual meeting, First Church passed a resolution by a final vote of 334 to 4, severing its relations with defendants and retaining title to all real or personal property held by the church. Shortly thereafter, the commission submitted its report to the Presbytery advising removal of the Session of the First Church and appointment of another administrative commission with authority to function as a Session. The Presbytery attempted to exercise continued control over First Church by removing its ministers'

names from the church rolls but plaintiffs disregarded the orders of the commission and functioned as an autonomous body.

On April 16, 1977, plaintiffs, the church, its ministers and its governing session, commenced this action seeking a declaration that it was free to withdraw from defendants UPCUSA and Presbytery of Albany and a permanent injunction enjoining defendants from interfering with plaintiffs' use and enjoyment of church property. In their answer, defendants opposed the action and asserted a counterclaim seeking to permanently enjoin plaintiffs from refusing to obey its directives, orders and mandates in the management and control of the church.* Following a non-jury trial, plaintiffs were granted an order permanently enjoining defendants from interfering with the property but denying declaratory relief on the withdrawal issue. Defendants' counterclaim was dismissed.

A divided Appellate Division modified the judgment of Trial Term by reversing the grant of injunctive relief, dismissing the complaint and granting defendants' counterclaim. The three judge majority of the court, in an opinion by Justice Kane, relied upon the principle of deference by civil authorities in ecclesiastical matters and held that the court should not adjudicate the claims (see *Watson v. Jones*, 30 US [13 Wall.] 679). Presiding Justice Mahoney, concurred in part. He applied the "neutral principles of law" rationale of *Jones v. Wolf* (443 U.S. 595) to the facts and after doing so he held for defendants on their counterclaim for injunctive relief.

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* Plaintiffs had previously sued in the United States District Court for the Northern District of New York (Foley, J.) seeking identical relief. The requested relief was denied on the ground that the First Amendment precluded the court from ruling on the issues (*First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F. Supp. 450). No claim is made that *res judicata* principles apply because of that determination.

Dissenting Justice Casey also applied the "neutral principles of law" rule but after analyzing the evidence he found that plaintiffs were entitled to injunctive relief and he therefore voted to affirm Trial Term's judgment.

Before this court, defendants characterize the present dispute as involving nothing more than a controversy over church policy and authority. To support their position they cite the allegations of plaintiffs' complaint objecting to UPCUSA's funding of various political and social groups and the refusal of plaintiffs to recognize the authority of the investigative commission. They contend that because this is a policy dispute the court must defer to the authority of the hierarchical church and avoid resolving the underlying question of property ownership; any other course would necessarily entangle it in church dogma and doctrine and thereby violate the First Amendment.

Plaintiffs, on the other hand, view this as an action concerning only the question of property ownership, a matter which can be resolved without violating the prohibitions of the First Amendment by application of the neutral principles of law rule. Applying neutral principles, plaintiffs conclude that they are entitled to ownership and control of the property because the deeds to the property are in the name of the local church or its trustees, the members of the local church provided all the funds for the purchase and maintenance of the church property, and the church constitution contained no express language granting a trust or proprietary right in favor of the UPCUSA.

Addressing these contentions, our analysis starts with a brief discussion of the general principles recognized by the courts in church-related disputes, then proceeds, in order, to a consideration of the deference rule, the neutral principles of law rule and the application of that rule to the facts of this case, and finally, to a consideration of implied trust principles.

I

The legal rules governing this dispute are derived from the Federal Constitution and have developed through a number of court decisions interpreting it.

The First Amendment, binding on the states through the Fourteenth, prohibits the making of "laws respecting an establishment of religion or prohibiting the free exercise thereof . . ." (US Const, 1st Amdt, 14th Amdt, *Cantwell v. Connecticut*, 310 US 296 [free exercise]; *Everson v. Board of Education*, 330 US 1 [establishment]). Consistent with these amendments civil courts are forbidden from interfering in or determining religious disputes. Such rulings violate the First Amendment because they simultaneously establish one religious belief as correct for the organization while interfering with the free exercise of the opposing faction's beliefs (*Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, 369 [Brennan, J. concurring]; see Nowak, et al., Constitutional Law [2nd ed], Ch. 19 §IV, pp. 1071-1072; Tribe, American Constitutional Law, §14-12, pp. 870-872). The Constitution directs that religious bodies are to be left free to decide church matters for themselves, uninhibited by state interference (*Serbian Orthodox Diocese v. Milivojevich*, 426 US 696; *Kedroff v. St. Nicholas Cathedral*, 344 US 94, 116).

In *Serbian Orthodox Diocese* (*supra*), the issues concerned the identity of the lawful bishop of the Serbian Eastern Orthodox Diocese for the United States and the validity of the division of the American-Canadian Diocese into three Dioceses. A similar issue was presented in *Kedroff v. St. Nicholas Cathedral* (*supra*) when the court was asked to determine which of two competing church organizations, the Russian Orthodox Church in America or its Russian counterpart, had the power to appoint the prelate of the New York Diocese. The Supreme Court refused to resolve these questions notwithstanding that the control of church properties were

incidentally affected by the determinations. The court deferred to the ecclesiastical bodies because to do otherwise in an attempt to settle the property disputes would require the court to interpret church doctrine and involve it in matters which were predominantly religious disagreements.

These rulings controlled the trial court's disposition of plaintiffs' first demand for relief. To the extent that their complaint sought a declaration of their right to withdraw from the Presbytery, it was beyond the power of the court to grant that relief because the determination required an examination and interpretation of the authority of the Presbytery to permit or prevent withdrawal of a local church. And this was so even though the court might have found support for First Church's claim from the facts that the Church constitution is silent on the issue and there is apparent precedent for unilateral withdrawal by a local church and dismissal to another denomination. Thus, Trial Term denied plaintiffs' request for declaratory relief.

To the extent that plaintiffs' complaint seeks to enjoin defendants from interfering with its use of the property, however, the matter was properly entertained. At the time this action was before the court, the abstract issue of whether the local church had the right to withdraw from the Presbytery was not in the case (see *Presbytery of Riverside v. Church of Palm Springs*, 89 Cal. App. 3d 910, *cert. den.*, 444 US 974 and *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, Mo. App. [decided January 31, 1984]). The Presbytery had not yet appointed a commission to replace the Church Session and plaintiffs had terminated their relations with the Presbytery and refused to recognize its authority. Thus judicial resolution of this property dispute will not cause the court to intrude into the religious area because it is not required to decide which of two competing bodies is the lawful Session with authority to control the property (cf, *Serbian Orthodox Diocese v. Milivojevich*, 426 US

696, *supra*). Inasmuch as "the State has a legitimate interest in resolving property disputes and a civil court is a proper forum for that resolution" a determination of the issue submitted to us is appropriate (see *Presbyterian Church v. Hull Church*, 393 US 440, 445; Note, Judicial Intervention in Church Property Disputes — Some Constitutional Considerations, 74 Yale Law Journal 1113, 1130). Indeed, the Supreme Court has specifically permitted State court resolution of church property disputes in these circumstances, i.e. when the denominational church has contested the right of the local church to withdraw, by holding that no federal question is presented by the State court's ruling with respect to a property dispute in favor of the withdrawing faction (see *Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, *dsmg app*, 254 Md. 162).

II

Nevertheless, defendants contend, and the Appellate Division majority held, that even if the case is viewed as a contest over the right to control use of the property, the courts are bound to defer to the highest authority in the hierarchical church pursuant to the longstanding rule of *Watson v. Jones* (80 US 679, *supra*). *Watson*, decided before the First Amendment was held applicable to the states, dealt with a dispute between two rival factions of the Walnut Street Presbyterian Church over control of the church premises. The deed to the property as well as the charter of the local church, "subjected both property and trustees alike to the operation of the general church's fundamental laws." The minority faction seized control of the church and in the resulting litigation, the Kentucky courts ruled in its favor. The majority faction then brought an action in federal court which sustained their claim and on appeal the United States Supreme Court affirmed. It noted that the local congregation was a member of a larger Presbyterian Church and subject to its authority and because the General Assembly had decided in favor of the ma-

jority faction, the courts were bound by that decision. Justice Miller speaking for the court stated that:

> "[W]here the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete [and] . . . whenever *the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.* . . . " 80 U.S. (13 Wall) at 722, 727 (emphasis added).

This language forms the basis for the "complete deference" standard of review. It provides that all members of hierarchical organizations submit themselves to the decision-making authority of the church in ecclesiastical matters, excluding civil court involvement "in the absence of fraud, collusion or arbitrariness" (*Gonzales v. Roman Catholic Archbishop*, 280 US 1, 16).

Although apparently absolute in scope, the *Watson* decision did not pass on whether the courts could decide exclusively property issues in litigation involving a hierarchical church (see Note, Judicial Intervention in Church Property Disputes — Some Constitutional Considerations, 74 Yale Law Journal 1113, 1120-1121, *supra*). That question was answered in *Presbyterian Church v. Hull Church* (393 US 440, *supra*). On facts analogous to *Watson*, the court recognized that church property disputes implicate the establishment and free exercise clauses of the First Amendment but held that the courts are free to decide such disputes if they can do so without resolving underlying controversies over religious doctrine. It endorsed the "neutral principles of law" analysis which has been developed for use in all property disputes and which can be applied without

"establishing" churches to which the property is awarded (*Presbyterian Church v. Hull Church, supra*, at p. 449). This rule was later restated and approved in *Jones v. Wolf* (443 US 595, *supra*). Thus even though members of a local group belong to a hierarchical church, they may withdraw from the church and claim title to real and personal property, provided that they have not previously ceded the property to the denominational church (Nowak, et al. Constitutional Law, Ch. 19, §IV, p. 1075). The fact that the Presbytery is part of a hierarchical body which may have determined the property dispute adversely to plaintiffs does not bind this court if it proves possible to decide the controversy through application of "neutral principles of law."

III

The neutral principles of law analysis has not been explicitly adopted by this state, although we applied the rule in *Avitzur v. Avitzur* (58 N.Y.2d 108, 114-115, *cert. den.*, US , [civil court may enforce the secular terms of a religious marriage contract (Ketubah) through application of ordinary principles of contract law]). We do so in this action. Applying that analysis, we determine that the property shall remain in the control of plaintiff First Church.

In *Jones v. Wolf*, 164 members of the Vineville Presbyterian Church voted to separate from the Presbyterian Church in the United States (PCUS), while 94 members opposed such action. The majority then united with another denomination and retained possession of local church property. The Presbytery of Augusta-Macon appointed a commission to investigate the dispute and that commission ultimately ruled that the minority faction was the "true congregation" of the local church. Members of the minority faction then sued in state court seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the local

church property. Applying "neutral principles of law," the trial court granted judgment for the majority and the Georgia Supreme Court affirmed. Although the Supreme Court approved the rationale of the state courts it vacated the judgment and remanded the case for further proceedings because they had failed to address the additional complicating factor that the congregation was itself divided. That problem is absent in this case because the four members who did not wish to withdraw from the Presbytery have not contested the action of the overwhelming majority of the church membership, and without the dissenters' involvement, the case may properly be viewed as no more than a dispute between the general church and the local congregation.

In *Jones* the Supreme Court held that a state court is entitled to adopt a "neutral principles of law" analysis as a means of resolving church property disputes, but it is not required to do so. Judicial deference to a hierarchical organization's internal authority remains an acceptable alternative mode of decision. We choose to recognize the neutral principles of law analysis and we apply it here. We do so in the belief that when properly applied it avoids drawing civil courts into religious controversies by focusing on evidence from which the court may discern the objective intention of the parties and it also permits the state to protect its legitimate interests in securing titles to property. The rule is explicitly designed to achieve that end (see *Jones v. Wolf*, 443 US 595, *supra*, p. 603-604). It is completely secular in operation, it is flexible enough to accommodate all forms of religious organizations and it relies upon well-established principles of law familiar to judges and lawyers. It also provides predictability so that religious organizations may order their affairs to account for its application. Moreover, we agree with those who have observed that the doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has

relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause. Additionally, by supporting the hierarchical polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion (see Adams and Hanlon, *Jones v. Wolf*, Church Autonomy and the Religion Clauses of the First Amendment, 128 U. Pa. L. Review 1291, 1337).

In applying neutral principles, the focus is on the language of the deeds, the terms of the local church charter, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property (*Jones v. Wolf*, 443 US 595, supra, p. 603, citing *Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, 368, *dsmg. app.*, 254 Md. 162). The court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, taking special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties have intended to create a trust or restriction. The trial court correctly applied these principles in ruling in plaintiffs' favor.

First, under familiar property law principles, plaintiff church held record title to the property free from any competing interests. The deeds by which plaintiff church acquired the several parcels of realty all named First Church or its trustees as grantees, their operative provisions contained no forfeiture or reversion clauses in favor of the various grantors or UPCUSA and the record does not indicate that any of the property was acquired by

restrictive gift. None of the deeds include language of trust or restriction vesting a present or future interest in the Albany Presbytery or the UPCUSA.

Turning to the local charter, plaintiff church apparently filed two certificates of incorporation, the first in 1803 and the second in 1809 and these certificates are silent on the question of how the property is to be owned.

Next, state law provides that property disputes involving the Presbyterian Church are controlled by section 69 (subd 3) of the Religious Corporation Law. It requires that trustees of the local church govern the property in accordance with the constitution of the UPCUSA (see e.g., *Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*, 222 NY 305). However, these provisions of the Religious Corporation Law are not applicable to churches incorporated prior to 1828 if the statute is inconsistent with the law as it existed at the time of incorporation, unless the church reincorporates after 1828 or the trustees determine by resolution that the provisions of the Religious Corporation Law shall apply (Religious Corporation Law, §24). The exception governs this case inasmuch as the law in 1803, the date of incorporation, is inconsistent with section 69 (see *Matter of First Presb. Soc. of Buffalo*, 106 NY 251, 254), there was no reincorporation by plaintiff church subsequent to 1828 and the trustees never resolved to make the statute applicable. Indeed the fact that plaintiff church, acting through its trustees, chose not to bring itself within the scope of section 69, relying instead upon prior law giving it undisputed ownership, is evidence that ownership rests with plaintiffs.

The last item to be considered is the constitution of the denominational church, known as the Book of Order. In examining it, the court may look only to provisions relating to property and it must interpret them in a secular light. The Book contains no provision which creates an express trust in favor of the UPCUSA. But defendants rely upon the wording in two chapters to

support their view that the denominational church is intended to retain control of local church property in the event of a schism. In part II, chapter XXXII, entitled "Of Incorporation and of Trustees," section 62.11 provides that whenever a local church is dissolved, "such property as it may have * * * shall be held * * * as the presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America." That provision is inapplicable because plaintiff church is not undergoing a dissolution or extinction. Defendants also refer the court to the provisions in chapter XI of part II, entitled "Of the Session". Section 41.07 of chapter XI provides that the "session", which is the governing body of the local church, has "exclusive authority over the uses to which the church buildings and properties may be put * * *". (See, also, Book of Order, ch. XI, §41.08; ch. XXXII, §62.08.) Section 41.15 authorizes the regional governing body within UPCUSA, the "presbytery", to appoint a "commission" to take the place of the local church's "session", with the full powers of the "session", in the event "the session of a particular church is unable or unwilling to manage wisely the affairs of its church". These provisions, relied upon by the concurring Justice at the Appellate Division as establishing an intent to create a beneficial interest in the denominational church, are located outside the property section of the Book of Order. They deal with church government and relate only indirectly to the control of property. They set forth the mechanism of church government in the event of a church dispute and any inquiry into their meaning by a court is constitutionally foreclosed because it would require the court to choose between the insurgent Session and the commission or "replacement Session." Moreover, the authority of the Session to direct control of property in such a dispute is belied by the constitution itself in view of the fact that other sections of the Book ascribe to the Session power which is purely spiritual (Part II, Chapter V, section

35.03). In view of this ambiguity, these provisions should be discounted, leaving nothing in the Book of Order to support defendants' position.

IV

Finally, we address the argument that in the absence of a specific understanding or agreement preserving a separate entity and expressing an intention to withhold property, it is presumed that the local church intended to dedicate the property to the purposes of the larger body by voluntarily merging itself with it (see *Mills v. Baldwin*, 263 So.2d 2 [Fla.], vacated and remanded 443 US 914). This represents an application of the implied trust doctrine which we have recognized in other contexts (see *St. Joseph's Hospital v. Bennett*, 281 NY 115). It is not applicable here.

There are three types of implied trusts in church property disputes: (1) an implied trust for the benefit of those members of a divided congregation who adhere to the principles of the founders of the religion (see *Attorney General v. Pearson*, 36 Eng Rep 135); (2) an implied trust for the denominational church and (3) an implied trust for the members of the congregation (see Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142). Only the first two types concern us. An implied trust for the members of the congregation, by definition, would not benefit this denominational church.

The first type of trust must be rejected where it leaves the courts in the position of determining what the original principles of the church were — the inquiry into doctrine precluded by *Presbyterian Church v. Hull Church* (393 US 440, *supra*) and earlier state decisions (see *Gram v. Evangelical Lutheran Soc.*, 36 NY 1; *Petty v. Tooker*, 21 NY 267; *Robertson v. Bullions*, 11 NY 243; See Tribe, American Constitutional Law, §14-12, pp. 872-875). Nor can there be an implied trust of the

second type, for to establish such a trust there must be a sufficient manifestation of the intention to do so. (Restatement Second of Trusts, Section 22). First Church acquired the property on its own without any funding assistance from the denominational church and there is no evidence that it intended to hold the property in trust. The evidence is just the other way. First Church took no action from which an intent to create a trust may be implied and it had no notice or knowledge that the Presbytery or UPCUSA claimed that an implied trust existed prior to this dispute. The trustees of First Church failed to pass a resolution bringing the church within the statutory trust provision of section 69 of the New York Religious Corporation Law and no other commitment in writing was undertaken to create one (see *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, *supra*). Additionally, not only does the Book of Order contain no provision of trust, but in 1929 UPCUSA proposed an amendment to the church rules establishing a trust of all church properties for the denominational church and the amendment failed to receive the necessary votes of the Presbyteries for passage. The mere fact of First Church's association with the denominational body, even an association lasting 200 years, does not by itself support a finding that an implied trust was created.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, without costs, and the judgment of Trial Term reinstated.

* * * * * * * * * * *

Order, insofar as appealed from, reversed, without costs, and judgment of Supreme Court, Saratoga County, reinstated. Opinion by Judge Simons. Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Kaye concur.

Decided May 15, 1984.

STATE OF NEW YORK SUPREME COURT
SARATOGA COUNTY

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, HERBERT S. MEKEEL, Individually and as Moderator of the Session of the First Presbyterian Church of Schenectady, New York, MICHAEL R. ALFORD, Individually and as Associate Minister of the First Presbyterian Church of Schenectady, New York, ROBERT V. KLINT and WILLIAM T. LANIER, Individually and as members of the Church Session of the First Presbyterian Church of Schenectady, New York,

DECISION

Plaintiffs

-against-

UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA and PRESBYTERY OF ALBANY,

Defendants.

APPEARANCES:

Simon, Trieble & Werner, attorneys for plaintiffs (William J. Werner, of counsel, and W. Jack Williamson, of counsel)

Duncan S. MacAffer, attorney for defendants

AMYOT, J.

This action which seeks declaratory and injunctive relief was tried before the court without a jury.

From the proof, the pleadings and the stipulations agreed to by the parties the following factual background is established.

The defendant United Presbyterian Church in the United States of America (UPCUSA), an unincorporated association, is a connectional or hierarchical church with ecclesiastical authority and control ascending through four judicatories — the local Session, the district Presbytery, the regional Synod and the national General Assembly — as defined in the Book of Order which is part of the constitution of the church and which regulates its form of government.

The defendant Presbytery of Albany is the first of the judicatories in ascending order above the Session of the plaintiff church. It exercises such authority and control, as defined in the Book of Order, over local churches within its geographical jurisdiction.

The plaintiff First Presbyterian Church of Schenectady is a corporation, the spiritual government of which is maintained by its Session. It is within the geographical district of the defendant Presbytery of Albany. It was formed as an unincorporated religious association in 1760 and by 1770 it was a member of the Presbytery of New York. Thereafter it was incorporated in 1803. The only change in the corporate identity since that time was an amendment to the articles of incorporation filed in 1809 which changed the corporate name but made no other significant alterations. Since its founding it has subscribed to and been associated with the Presbyterian doctrine.

Prior to January 1977 discontent developed within the plaintiff church because of UPCUSA's support of positions and activities thought to be violative of fundamental beliefs and principles of Presbyterianism. The local church therefore petitioned the defendant Presbytery to be dismissed to another denomination. That pe-

tition was denied in March of 1976 and thereupon the defendant Presbytery, pursuant to the Book of Order, established an administrative commission to investigate conditions, at the plaintiff church. Before any action was taken by that commission, the plaintiff corporation, at its annual meeting on January 24, 1977, adopted a resolution "that it hereby and immediately severs relations with the Presbytery of Albany, United Presbyterian Church in the United States of America, while retaining title to all its properties, real and personal, which it presently occupies or administers and which are held in its name."

Thereafter on February 1, 1977 the administrative commission reported and recommended that the Session of the plaintiff church be supplanted. The defendant Presbytery then directed the Session of the plaintiff church "to cease to act until directed otherwise by the Presbytery", and established another "administrative commission of three ministers and two ruling elders with the full power of the Session of the First Presbyterian Church of Schenectady, New York."

Although appeal from those directives of the defendant Presbytery was authorized within the hierarchical structure, no such review was sought by the plaintiff church or by anyone eligible to act on its behalf. Instead, none of the orders or directives of the commission have been obeyed by the plaintiff church and it continues to function without acceptance of or acquiescence in the authority of the defendants.

From time to time since its formation the plaintiff church has acquired real and personal property. The deeds by which such realty was transferred to the local church identified the grantees by slightly different names* but it is conceded that in each instance the

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* Grantees in these deeds are varyingly designated as "the Trustees of the First Presbyterian Church in the City of Schenectady" or "the Trustees of the First Presbyterian

plaintiff church was the intended grantee and title passed to the local church. None of the deeds provided for reversion or forfeiture for any reason and none referred to any other ecclesiastical organization or denomination. No limitation was placed on the grantee's ownership and no trust was established by any of the deeds.

Neither of the defendants nor their predecessors has paid for or contributed to the cost or maintenance of the plaintiff's property. The charter of the plaintiff church does not establish any trust or interest in locally owned property for the benefit of any other church judicatory and none is provided for, directly or by inference, in the constitution of UPCUSA nor under New York State Law.

The plaintiff now seeks to permanently enjoin the defendants from interfering with its lands, buildings, moneys and other properties. Judgment is also sought declaring "that the plaintiff church is a separate religious corporation independent of the defendants and free to manage its own affairs without interference or control by the defendants or any of their agencies or subdivisions, and that the defendants have no rightful claim, in law or equity, to the lands, buildings, moneys and other properties, real and personal, of the plaintiff church."

The defendants contend that the court is without jurisdiction to determine the issues presented by the pleadings since they deal with religious doctrines or ecclesiastical administration and therefore the court must accept and enforce the decisions of the authorized judicatories within the denominational hierarchy. The defendants seek to permanently enjoin the plaintiff from interfering with the administrative commission's management and control of the religious, temporal and civil affairs of the First Presbyterian Church of Schenectady and from interfering with the exercise of defendants'

Church of Schenectady, New York" or "First Presbyterian Church of Schenectady, N.Y." or "the First Presbyterian Church of Schenectady."

authority, control and management over the lands, buildings and property of the plaintiff church.

As applied to hierarchical churches, it is well-settled that civil courts must accept as binding the decisions of the internal judicatories in all matters of ecclesiastical rule, custom or law, discipline or faith. (*Watson v. Jones*, 13 Wall 679, 20 L Ed 666.) Carved out of that general proposition, however, is the well-recognized rule that disputes over the ownership or control of church property are to be decided by civil courts under neutral principles of law so long as adjudication of those disputes does not depend on the secular court's determination of an underlying ecclesiastical controversy over doctrine or practice. (*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 US 440, 21 L Ed 2d 658.)

The core issue to be determined in connection with the application of the plaintiffs for a permanent injunction is the legal ownership of property now held in the name of the plaintiff church. Resolution of that issue does not depend on interpretation of church polity or questions of faith, doctrine or practice. It is purely a legal issue to be determined on principles of secular law. Under such law title to the property clearly is vested in the plaintiff church without condition or limitation.

The plaintiffs, therefore, are entitled to the permanent injunction prayed for in the complaint.

However, the application for judgment declaring that the plaintiff church is independent of the defendants' authority and control involves different legal principles.

It is conceded that prior to the adoption of the resolution to sever from the defendants, the plaintiff church was a constituent member of UPCUSA subject to the authority of superior judicatories. It voluntarily chose to associate with and become an established member of the general church. It has not been dissolved nor declared extinct.

Although the defendant Presbytery has denied the petition of the plaintiff church for dismissal to another denomination, neither defendant has ruled on the effectiveness of the plaintiff church's attempt unilaterally to sever from the general church and from the jurisdiction of the defendant Presbytery.

As to churches which are subject to the Religious Corporations Law, it is established in this state that by secession a constituent church cannot terminate its relationship with the general church and thus become independent. (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West Twenty-Third Street*, 222 NY 305, 313-315.) Here involved, however, is a local church incorporated prior to 1828 and by section 24 of the Religious Corporations Law it is expressly excepted from the provisions of that law which are inconsistent with or in derogation of its rights under the law pursuant to which it was formed. The plaintiff church was incorporated as an independent church under chapter 79 of the Laws of 1801 pursuant to which broad and unencumbered rights and powers were given to the trustees in the management and control of temporalities owned by the church. The provisions of the Religious Corporations Law which limit and regulate the powers and duties of the trustees with regard to such property (Religious Corporations Law, §5) are not binding on the plaintiff church and as to its property they establish no title or control in the defendants.

The rights acquired by the plaintiff church under the laws of its incorporation remain inviolate, (See *People ex rel Sturges v. Keese*, 27 Hun 483), and unless the right to ownership and control of its property has been forfeited by the voluntary association with and submission to the authority of the defendants, those rights still obtain and the defendants have no claim on the temporalities of the plaintiff church.

Whether the plaintiff church is "independent of the defendants and free to manage its own affairs without

interference or control by the defendants or any of their agencies or subdivisions" depends upon whether they have complied with church law in regard to such matters. Experts sworn by both sides testified to conflicting opinions in this regard. Whether church rules or custom permit a constituent member without permission to withdraw from the parent body is to be determined under church law interpreted by church courts. It is a matter of church government to be resolved within the ecclesiastical structure and that resolution must be accepted by secular courts. For this court to determine whether the plaintiff church is independent of the defendants' authority and control would require an interpretation of the rules by which the general church manages and regulates its branches and to evaluate the right of a local church unilaterally to separate itself from the parent body. In such matters of internal government secular courts must abide by the determinations of spiritual tribunals constituted within the religious organizations for such purposes. (*See Jones v. Wolf*, 443 US 595, 609, 61 L Ed 2d 775, 788; *Kedroff v. St. Nicholas Cathedral*, 344 US 94, 97 L Ed 120.)

> "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." (*Serbian Orthodox Diocese v. Milivojevich*, 426 US 696, 724-725, 49 L Ed 2d 151, 171.)

Leaving to the ecclesiastical courts the determination of the question of the status of the plaintiff church in the denominational scheme does not dilute or in any

way affect the ownership of property belonging to the plaintiff church. Instead, it merely preserves the integrity of the government and authority of the general church over its subordinate branches in matters of church polity without interference by civil tribunals.

Plaintiffs' action for a declaratory judgment is dismissed.

The counterclaim of the defendants is dismissed.

Judgment accordingly may enter.

Dated this 12th day of February, 1981 at Ballston Spa, N.Y.

J. Ramond Amyot, J.S.C.

FIRST PRESBYTERIAN CHURCH
OF SCHENECTADY, et al.,
Respondents,

v.

UNITED PRESBYTERIAN CHURCH IN THE
UNITED STATES OF AMERICA, et al.,
Appellants.

SUPREME COURT,
APPELLATE DIVISION, THIRD DEPARTMENT

March 10, 1983

OPINION FOR MODIFICATION

KANE, J.

This matter concerns the dispute between a local church and its regional Presbytery over the power of an administrative commission appointed by the Presbytery to control the affairs and property of the local church. At issue is the extent of this court's jurisdiction to determine intrachurch disputes under Federal and State law and, if exercised, the degree of deference required in effectuating such determinations. Of necessity, a brief recitation of the facts and a history of plaintiff church is required.

The First Presbyterian Church of Schenectady was founded as an unincorporated religious association in 1760 during the days of the Colonial Governor. It was incorporated in the State of New York pursuant to Chapter 79 of the Laws of 1801 on January 14, 1803, and except for a change of name on January 20, 1809, there has been no change in its corporate status since that date. During this entire period up to January, 1977, it subscribed to the Presbyterian doctrine, and recognized

and adhered to the authority of the regional Presbytery over its congregation and property. However, prior to January, 1977, as a result of disenchantment and discontent with what it considered the policies and activities of defendant United Presbyterian Church in the United States of America (UPCUSA), plaintiff petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied and an administrative commission was instructed to investigate the actions of the local Session, the governing body of plaintiff church elected by the members of its congregation. However, before said commission rendered its report, plaintiff church, on January 24, 1977, at its annual meeting, adopted a resolution severing relations with defendants and retaining title to all property both real and personal then held or administered by it. On February 1, 1977, the investigating commission made its report to the Presbytery, recommending removal of the local Session as the governing body of the First Presbyterian Church of Schenectady and the appointment of another administrative commission with full power of the Session to act in its place. The Presbytery acted in accordance with the recommendation and, at the same time dissolved the pastoral relationship of plaintiffs Mekeel and Alford with the local church and deleted their names from all its rolls. There was no administrative appeal taken by plaintiff church or any of its members through the hierarchy of defendants following this action; rather, plaintiffs chose to ignore or disobey directives of the commission and pursued their functions without acceptance of or submission to the authority of defendants. Thereafter, on February 17, 1977, plaintiff church instituted an action against UPCUSA in the United States District Court for the Northern District of New York, seeking a declaratory judgment of independence from UPCUSA and injunctive relief restraining it from interfering with plaintiff's independence. By decision dated March 11, 1977, this relief was denied, *inter*

alia, on the grounds the dispute was subject to resolution under ecclesiastical law and not a subject for judicial inquiry (*First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F. Supp. 450).

The instant action was then commenced seeking the same type of relief. An application for temporary injunctive relief was denied by Special Term in a decision dated July 18, 1977, upon much the same grounds as in the District Court Action. However, upon trial before the court without a jury of this action and the counterclaim interposed by defendants seeking affirmative injunctive relief on behalf of its administrative commission, Trial Term ultimately concluded that it could not declare the status or powers of the respective parties without interpreting church law, and thus impermissibly trespass into the ecclesiastical field, but, that it was within its power to resolve the questions of title and possession of church property by applying the "neutral principles of law" concept as enunciated in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775. Accordingly, plaintiffs were granted the injunctive relief they sought, and defendants' counterclaim was dismissed.

On this appeal, defendants contend that the issues in this matter must be decided by applying the long-standing rule of *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 and its progeny, which requires that secular courts give deference to the authority of a hierarchical church in a dispute involving matters of intra-church policy, power and property. This being the case, defendants assert that once Trial Term looked behind the provisions of the Constitution of UPCUSA (The Book of Order), it violated this rule, which was reiterated in *Jones v. Wolf* (*supra*), upon which it relied heavily. In support of their position, defendants contend that throughout its history, plaintiff church has acquiesced and followed all of the mandates, rules, regulations and assessments of UPCUSA and, thus, by this action has

voluntarily subjected itself to the guidance and control of the national denomination. Moreover, defendants argue that as the use and benefit of church property is governed and controlled by the organic law of the church as provided in its Book of Order, there is, therefore, vested in defendants a beneficial interest in this property without affecting the legal title to that property. Accordingly, since the Book of Order spells out in detail the procedures to be followed in the event of a dispute such as the one at hand, upon compliance with those procedures, defendants are entitled to the aid of a court of equity to enforce any ecclesiastical decree imposed against a congregation (*Westminster Presbyterian Church of West Twenty-Third Street v. Trustees of Presbytery of New York*, 211 N.Y. 214, 105 N.E. 199).

Plaintiffs on the other hand, contend that the clear holding in *Jones v. Wolf* (*supra*) and cases that have followed it in other jurisdictions, reject the argument that denominational replacement of a local session by an administrative commission can be enforced in a secular court of equity. Rather, plaintiffs assert that this case is the classic dispute as to the legal ownership of property to which the "neutral principles of law" rule may be applied, and that Trial Term properly applied that rule to the facts of this case.

[1, 2] We are called upon to resolve what seems to be a clear-cut issue. However, resolution of that issue is far from simple. As a first step, we conclude that plaintiff church is not subject to any of the pertinent provisions of the Religious Corporations Law of the State of New York. Having been incorporated prior to January 1, 1828, the church is possessed of all the rights and privileges which it was accorded at the time of the original incorporation (L.1896, ch. 336, now Religious Corporations Law, §24). Next, we must determine whether this dispute may be resolved by applying the "neutral principles of law" analysis to this factual setting, without contravening established principles of separation of church

and State. We think not. Resolution of the controversy must depend, ultimately, on considerations of religious doctrine and practice. It is not dependent "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges" (*Jones v. Wolf, supra,* 443 U.S. p. 603, 99 S.Ct. p. 3025; see, also, *Avitzur v. Avitzur*, 58 N.Y.2d 108, 459 N.Y.S.2d 572, 446 N.E.2d 136 (1983)).

While the use and occupancy of property may depend on the result of this litigation, the genesis of the dispute is rooted in the exercise of power by a hierarchical church according to its Book of Order. Applying "neutral principles of law", as suggested by plaintiffs, will, in our view, inexorably entangle this court in a religious controversy. Title to property is not the source of the dispute; it is the beneficial use and application of that property which is at issue. Any determination of that issue by this court would be a direct intrusion into the area of religious doctrine, practice and administration. In such circumstances, we must defer to the authority of the ecclesiastical body (*Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151.)

[3] This does not mean that the court may not afford assistance to church authority in the enforcement of its decrees, for otherwise the controversy may never be resolved. Defendant Presbytery has the right to proceed in a court of equity to enforce its ecclesiastical decrees against the congregation of plaintiff church (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*, 222 N.Y. 305, 318-319, 118 N.E. 800); cf. *Avitzur v. Avitzur, supra.* This relief should be granted to defendants in accordance with their counterclaim.

The judgment should be modified, on the law and the facts, by reversing so much thereof as granted plaintiffs injunctive relief and dismissed the counterclaim; the complaint dismissed, and judgment directed to be

entered in favor of defendants on their counterclaim, permanently enjoining plaintiffs from failing to obey the directives, orders and mandates of the administrative commission in the management and control of plaintiff church, and, as so modified, affirmed.

MAHONEY, Presiding Justice (concurring).

In my view, Trial Term properly decided that use of the "neutral principles of law" test was appropriate for resolution of the issue regarding title and possession of church property. I thus reject the majority's finding that use of this test will contravene established principles of separation of church and State.

Having concluded that Trial Term properly adopted the "neutral principles of law" test first permitted by the United States Supreme Court in *Presbyterian Church v. Mary Eliz. Blue Hull Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658, I disagree with the conclusion reached by Trial Term upon application of that test. As stated by the Supreme Court, use of the "neutral principles of law" test in settling local church property disputes requires examination of the language of the deeds, the terms of the local church charters, the State statutes governing the holding of church property and the provisions in the constitution of the general church concerning the ownership and control of church property (*Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775).

The only one of the above-enumerated sources which can arguably give the general church the right to control the property at issue in this lawsuit is the constitution of the United Presbyterian Church in the United States of America (UPCUSA). A major portion of this constitution, entitled the Book of Order, deals with the form of governmental structure within the general church and was made a part of the record in this case. Review of that document reveals several sections which support the general church's claim of control over the local church's property.

Section 41.07 of chapter XI provides that the "session", which is the governing body of the local church, has "exclusive authority over the uses to which the church buildings and properties may be put * * *". (See, also, Book of Order, ch. XI, §41.08; ch. XXXII, §62.08.) Section 41.15 of the same chapter authorizes the regional governing body within UPCUSA, the "presbytery", to appoint a "commission" to take the place of the local church's "session", with the full powers of the "session" upon a determination that "the session of a particular church is unable or unwilling to manage wisely the affairs of its church". This section was utilized by the Presbytery of Albany in this case following its investigation in the beginning of 1977 which led to appointment of an administrative "commission" with the full power of the "session" to act in its place.

A secular analysis of these provisions of UPCUSA's constitution, which were not present in the Presbyterian constitution being reviewed in *Jones v. Wolf* (*supra*), compels me to conclude that the general church and its regional Presbytery are entitled to prevail on their counterclaim whereby they seek to permanently enjoin plaintiffs from interfering with the management and control of the affairs and properties of the local church by the administrative "commission".[1]

In so ruling, I am not unaware of the difficulties which accompany use of the "neutral principles of law"

1. It should be noted that another provision in the Book of Order dealing with the authority to control church property, section 62.11 of chapter XXXII, is not applicable to this case. That section empowers the regional "presbytery" to control local church property whenever the local church is "formally dissolved by the presbytery, or has become extinct* * *", two conditions which are conceded not to have occurred in the instant case. Additionally, it should be noted that reliance on an amendment to the Book of Order made in 1981 (ch. XLII, §72.02), wherein it is explicitly stated that property owned by the local churches is held in trust for the use and benefit of UPCUSA, is not germane to the facts of this case which occurred in 1977.

test in resolving this matter. In relying on the above-mentioned provisions within the Book of Order to support the general church's right to control the property owned by the local church, religious doctrine and practice may appear to be involved since the decision by the Presbytery of Albany to replace the local church's "session" with an administrative "commission" was premised on a finding that the local governing body "is unable or unwilling to manage wisely the affairs of its church" (Book of Order, ch. XI, §41.15). This appearance of civil court entanglement in religious questions is illusory.

> [T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

(*Jones v. Wolf*, 443 U.S. 595, 604, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 96 S.Ct. 2372, 2380, 49 L.Ed.2d 151.)

Civil courts *must*, therefore, be bound by the ecclesiastical determination made within the governmental framework of the general church that the local "session" is not wisely managing its own affairs. That being the case, civil courts may then read the constitution in a secular manner which will not offend any constitutional principles.

Accordingly, I would modify the judgment entered upon Trial Term's decision by (1) affirming that portion which dismissed plaintiffs' request for declaratory relief, (2) reversing that portion which granted plaintiffs' request for injunctive relief, and (3) reversing that portion

which dismissed defendants' counterclaim for injunctive relief.

CASEY, Justice (dissenting).

In my view, application of the "neutral principles of law" approach to resolution of the intrachurch property dispute at issue here requires affirmance of Trial Term's judgment and, therefore, I dissent.

The State has a legitimate interest in resolving property disputes, and a civil court is a proper forum for that resolution (*Presbyterian Church v. Mary Eliz. Blue Hull Church*, 393 U.S. 440, 445, 89 S.Ct. 601, 604, 21 L.Ed.2d 658). A civil court's role, however, in resolving church property disputes is severely circumscribed by the First Amendment, but "[c]ivil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property" (*id.* at 449, 89 S.Ct. at 606). Rather, the First Amendment forbids civil court involvement in those church property disputes "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity * * *" (*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 96 S.Ct. 2372, 2380, 49 L.Ed.2d 151). Thus, although virtually any dispute over church property can be characterized generally as religious, particularly those arising out of a schism between a local church and the denominational church to which it has been affiliated, the foregoing principles establish that the First Amendment does not preclude civil court resolution of such a dispute so long as the method selected by the civil court for resolving the dispute does not require extensive civil court inquiry into ecclesiastical matters (compare *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 with *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*.)

In *Jones v. Wolf* (*supra*), the court held that the "neutral principles of law" approach to resolving church property disputes does not run afoul of the First Amendment. In so doing, however, the court noted that a State

is free to adopt any one of a number of methods for resolving such disputes, so long as the method chosen does not involve extensive inquiry into religious doctrine or polity (*id.* at 602, 99 S.Ct. at 3024). The Court of Appeals has recently employed the "neutral principles of law" approach to a religious dispute involving a marital agreement (*Avitzur v. Avitzur,* 58 N.Y.2d 108, 459 N.Y.S.2d 572, 446 N.E.2d 136 (1983)); and the same approach should be used to resolve this church property dispute (see *Russian Church of Our Lady of Kazan v. Dunkel,* 33 N.Y.2d 456, 462, 354 N.Y.S.2d 631, 310 N.E.2d 307).

Jones v. Wolf, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, *supra* instructs that, under the "neutral principles of law" approach to resolving church property disputes, a civil court may examine the deeds, the local church charter, the constitution of the general church and State statutes governing the holding of church property, to determine the intentions of the parties concerning ownership in the event of a schism. The court cautioned, however, that "[i]n undertaking such an examination, a civil court must take special care to scrutinize the documents in purely secular terms, and not to rely on religious precepts * * *" (*id.* at 604, 99 S.Ct. at 3025).

New York property disputes in the Presbyterian Church are often governed by section 69 (subd. 3) of the Religious Corporations Law, which requires the trustees of the local church to govern the property in accordance with the constitution of the United Presbyterian Church in the United States of America (see, e.g., *Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street,* 222 N.Y. 305, 118 N.E. 800). For churches incorporated prior to 1828, the provisions of the Religious Corporations Law are not applicable if they are inconsistent with the law as it existed at the time of incorporation, unless the church reincorporates after 1828 or the trustees, by resolution, determine

that the provisions of the Religious Corporations Law shall apply (Religious Corporations Law, §24). Here the local church incorporated in 1803, and the provisions of section 69 (subd. 3) of the Religious Corporations Law are apparently inconsistent with the law at that time (see *Matter of First Presb. Soc. of Buffalo*, 106 NY 251, 254, 12 N.E. 626). The record reveals no reincorporation by the local church subsequent to 1828 and no resolution by the trustees determining that the provisions of the Religious Corporations Law shall apply. Thus, the relevant New York statute governing ownership and control of church property is inapplicable.

Turning to the original certificate of incorporation of the local church, it is silent as to the manner in which local church property is to be owned and controlled, as is an amended certificate filed in 1809. Similarly, the various deeds in evidence by which the local church acquired property over the years contain nothing to indicate that the denominational church had any interest, legal or beneficial, in the property.

Turning now to the constitution, or Book of Order, of the denominational church, care must be taken to make the examination in light of the Supreme Court's cautionary instruction, noted above, that the document be scrutinized in purely secular terms. Defendants rely alternatively on two provisions in the Book of Order to establish the parties' intent that the denominational church retain control over the local church's property in the event of a schism.[2] In part II, chapter XXXII, section 62.11, the Book of Order provides that whenever a local church has been dissolved or becomes extinct, "such property as it

2. Defendants contend that the wording of these two provisions differs from that of similar provisions in the Book of Order reviewed by the Georgia courts in *Wolf v. Jones*, 244 Ga. 388, 260 S.E.2d 84, *cert. den.* 444 U.S. 1080, 100 S. Ct. 1031, 62 L.Ed.2d 763, following remand from the Supreme Court, and that, therefore, the result herein should be different from that in *Wolf*, where the courts ruled that the local church retained control of its property.

may have * * * shall be held * * * as the presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America". The provision, however, is expressly limited to dissolution or extinction of a local church, which concededly has not occurred here. Moreover, the phrase "such property as it may have" can be read as recognizing the local church's right to control and dispose of its property before it is dissolved or becomes extinct. Next, defendants rely on sections 41.07 and 41.15 of chapter XI of part II. Section 41.07 expressly vests in the "session", which is the governing body of the local church elected by its communicant members and moderated by its minister, "the exclusive authority over the uses to which the church buildings and properties may be put * * *". Section 41.15 authorizes the Presbytery, or regional governing body, to appoint a commission to replace a local church's session if it finds that the session is unable or unwilling to manage wisely the affairs of its church. Defendants actually used this provision here. Concerning the control of local church property, this provision is ambiguous in view of the general principles of church government contained in part II, chapter V, section 35-03, which provides that the "judicatories", including the Presbytery, shall have no "civil jurisdiction", and that "[t]heir power is wholly moral or spiritual, and that only ministerial and declarative". Of greater significance is that in 1929 an amendment to the Book of Order was proposed which would have expressly provided that the local churches held their property in trust for the denominational church. The proposal was rejected, but in 1981, long after the dispute at issue here arose, a similar amendment was proposed and accepted. Although this latter amendment stated that its purpose was simply to declare a principle adhered to by the church from its inception, the proposal and rejection of a similar amendment in 1929 indicates otherwise.

The foregoing factors amply support the trial court's decision. The deeds clearly vest title to the property exclusively in the trustees of the local church. The Book of Order leaves exclusive control over the property with the local governing body, and while defendant Presbytery has jurisdiction over the local governing body, that jurisdiction is expressly limited to moral or spiritual matters. Thus, at the time the instant dispute arose, the relevant documents contained no clear expression of the parties' intent that control over local church property be granted to defendants in the event of a schism. The proposal and rejection of a trust amendment in 1929 and the proposal and acceptance of a similar amendment in 1981 provide further proof establishing that such was not the intention of the parties. It should be emphasized that this analysis requires no inquiry into church doctrine or polity. Nor does the Book of Order incorporate religious concepts in the provisions relating to ownership of property. Rather, the foregoing conclusion results from examination of the relevant documents in light of "objective, well-established concepts of trust and property law familiar to lawyers and judges" (*Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, *supra*)".

Before concluding, some of defendants' arguments should be disposed of directly. Defendants maintain that pursuant to *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666, the First Amendment requires civil courts to defer to church decision in disputes involving church affairs. The holding in *Watson*, however, has clearly been modified over the years and, as noted above, *Jones v. Wolf* (*supra*) authorizes civil court involvement in church property disputes under the "neutral principles of law" approach employed herein. Defendants also maintain that New York law requires deference to the church decision herein, but the cases cited for this proposition (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*,

222 N.Y. 305, 118 N.E. 800, *supra; Matter of Presbytery of Albany*, 62 Misc.2d 791, 312 N.Y.S.2d 505, *affd.* 35 A.D.2d 252, 315 N.Y.S.2d 428, *affd.* 28 N.Y.2d 772, 321 N.Y.S.2d 377, 269 N.E.2d 918, *app. dsmd.* 404 U.S. 803, 92 S.Ct. 80, 30 L.Ed.2d 35) were decided on the basis of statutes not applicable here. Relying upon *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151, *supra*, defendants argue that deference must be given to the decision of defendant Presbytery to appoint a commission to replace the session of the local church and that, therefore, the courts of this State cannot resolve the property dispute. In the *Serbian* case, however, control over the disputed property concededly rested with the bishop of the diocese and the real dispute was over the propriety of the decision of the denominational church to remove the bishop, clearly a matter of church polity. Here, in contrast, the dispute is the classic one over the control of local church property in the event of a schism between the local church and the denominational church with which the local church has been affiliated, and resolution of that dispute does not depend upon the propriety of any disciplinary action taken by the denominational church. Defendants also rely on the lengthy affiliation of the local church with the denominational church, but mere involvement of the local church in defendants' ecclesiastical affairs does not necessarily subject the local church to defendants' control insofar as its property matters may be concerned (*New York Dist. of Assemblies of God v. Calvary Assembly of God*, 64 A.D.2d 311, 314, 409 N.Y.S.2d 842). Defendants assert that beneficial use or control of the property is at issue here, not legal title, but that is true of most intrachurch property disputes. Indeed, the theory that civil courts should not become involved where the dispute involves use or control of church property, rather than legal title, was advanced by the dissenters in *Jones v. Wolf*, 443 U.S. 595, 610-621, 99 S.Ct. 3020, 3029-3034, 61 L.Ed.2d 775. Finally, that

defendants may be a hierarchical religious organization, rather than congregational, as defendants contend, is not dispositive of this dispute under the "neutral principles of law" approach, for this argument, too, was advanced by the dissenters in *Jones v. Wolf* (*supra*).

The only affirmative injunctive relief granted by the judgment appealed from herein concerns the local church property. Since the proof in the record, using the "neutral principles of law" approach, provides an ample basis for the trial court's finding that the parties had no intention, at the time this dispute arose, to have defendants obtain control of local church property in the event of a schism, the judgment should be affirmed.

Remittitur

COURT OF APPEALS
STATE OF NEW YORK

The Honorable Lawrence H. Cooke, *Chief Judge*,
Presiding

No. 177

First Presbyterian Church of Schenectady, et al.,
Appellants,

v.

United Presbyterian Church in
The United States of America, et al.,
Respondents.

The appellant(s) in the above entitled appeal appeared by Simon, Trieble, McNamara & Rider, Esqs.; the respondent(s) appeared by Duncan S. MacAffer, Esq.

The Court, after due deliberation, orders and adjudges that the order, insofar as appealed from, reversed, without costs, and judgment of Supreme Court, Saratoga County, reinstated. Opinion by Judge Simons. Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Kaye concur.

The Court further orders that the papers required to be filed and this record of the proceedings in this Court be remitted to the Supreme Court, Saratoga County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

/s/ DONALD M. SHERAW
Donald M. Sheraw,
Clerk of the Court

Court of Appeals, Clerk's Office,
Albany, May 15, 1984

STATE OF NEW YORK

COURT OF APPEALS

EAGLE STREET
ALBANY, NEW YORK 12207

DECIDED JULY 5, 1984

No. 177, Mo. No. 631

First Presbyterian Church of Schenectady,
Herbert S. Mekeel, Individually &c.,
Appellants,

vs.

United Presbyterian Church in
The United States of America
and Presbytery of Albany,
Respondents

Motion for reargument denied.

Office - Supreme Court, U.S
FILED
OCT 31 1984
ALEXANDER L. STEVAS
CLERK

No. 84-551

In the Supreme Court of the United States

October Term, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,
Petitioners,

vs.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

WARREN JACKSON WILLIAMSON
(Counsel of Record)
P. O. Box 467
601 East Commerce Street
Greenville, Alabama 36037
(205) 382-2635

ROBERT S. TRIEBLE, ESQUIRE
SIMON, TRIEBLE, MCNAMARA & RIDER
P. O. Box 361
57 West High Street
Ballston Spa, New York 12020
(518) 885-5305
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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QUESTION PRESENTED

Did the Court of Appeals of New York violate the First and Fourteenth Amendments to the Constitution of the United States when it chose and applied the "neutral principles" approach in the resolution of a dispute between a local church and a national denomination over the ownership and control of local church property?

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No. 84-551

In the Supreme Court of the United States

October Term, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, ET AL.,

Petitioners,

vs.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATUTES INVOLVED

Section 24 of the Religious Corporations Law of the State of New York.

STATEMENT OF THE CASE

Petitioners' Statement of the Case omits certain pertinent and crucial facts.

The controversy in the case is between the First Presbyterian Church of Schenectady (hereinafter, First

Church) and The United Presbyterian Church in the United States of America (hereinafter, UPCUSA). The New York Court of Appeals correctly stated:

> The case may properly be viewed as no more than a dispute between the general church and the local congregation. (Petitioners' App. A-10).

The dispute is over the ownership and control of the local church's real and personal property.

UPCUSA is a connectional church with a representative form of church government and a series of judicatories. The powers in the presbyterian system are vested in the people who delegate certain of the powers to each of the church courts. In a connectional or presbyterian system, the power flows from the people up through the church courts in contrast to an episcopal or strictly hierarchical system where the power flows from the top down. The parties agreed that the form of government of UPCUSA pertinent to this case is contained in the Book of Order.

First Church was formed in about 1760 which was long before the formation of UPCUSA's Presbytery of Albany (hereinafter, Presbytery). In about 1790, First Church affiliated with this Presbytery. First Church remained a constituent member of UPCUSA until January 24, 1977 when First Church severed its ties with the national denomination. For the past almost eight years First Church has remained separated from UPCUSA, and not one single member of First Church has indicated a desire to be reaffiliated with UPCUSA during this eight year period.

UPCUSA's predecessor denomination was founded in 1789, about 30 years after First Church was formed. The original 1789 Constitution of UPCUSA provided that the

local congregation owned and controlled its local church property and no constitutional change regarding such property had been made to the date of this controversy.

First Church remained a member of UPCUSA until January 24, 1977 when, at a duly called meeting of the corporation and congregation, the church severed its affiliation with UPCUSA. On such date First Church had a membership of 440. The vote to sever was 223 ayes, 3 nays and 9 abstentions. Immediately thereafter the officers sent a ballot by mail to all the absent members. 112 of such absent members responded to the mail ballot as follows: 111 favored severance and 1 cast a negative vote. Thus of the 440 member local church, 334 voted for severance and only 4 voted against it. No complaint was filed and no appeal taken by any member of the congregation to Presbytery to this action of severance.

It was not until February 1, 1977 that Presbytery appointed an Administrative Commission with authority to act as Session of First Church; but that was one week after First Church adopted its resolution of severance of January 24, 1977.

After January 24, 1977, First Church refused to obey any directions of Presbytery or its Administrative Commission on the grounds that First Church had severed its connection and was no longer subject to the jurisdiction of UPCUSA.

First Church owned certain real and personal property on January 24, 1977. The deeds by which it acquired title to its various parcels of real property all named First Church or its trustee as grantee. None of these deeds contained any forfeiture clause or reversion clause

in favor of the various grantors. None of these deeds contained any provisions which purported to vest any interest, present or future, in UPCUSA, Presbytery or any other ecclesiastical organization or denomination.

First Church was duly incorporated under the laws of the State of New York on January 14, 1803, pursuant to Chapter 79 of the laws of New York of 1801. A correction to the original certificate adding the word "First" to the corporate name was filed on January 20, 1809. No change has been made in its corporate status since that date. And neither document contains any reference to any denomination. First Church has taken no action to reincorporate under Section 24 of the New York State Religious Corporations Law.

It was stipulated by the parties that neither Presbytery nor UPCUSA have paid any funds, made any financial gifts, or loans, for the purchase or maintenance of any property now owned or heretofore owned by First Church.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA) The Book of Order contained no provision for the forfeiture or reversion of local church property to the general church in the event a local congregation withdrew from the denomination.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA) the UPCUSA Constitution contained no express provision imposing a trust on local church property in favor of the denomination. Such an express trust provision was put in the UPCUSA Book of Order in 1981 but that was four years after this controversy arose. In 1929 UPCUSA attempted to amend its constitution to require each local church

to include trust language in their corporate documents that read as follows:

> the charter or articles of its corporation shall declare its property is held in trust under the constitution of and for the Presbyterian Church in the United States of America:

This amendment was rejected and did not pass. Nothing relating to such a trust was changed in the UPCUSA Constitution until 1981.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA) there was no provision in the Book of Order which gave or granted to UPCUSA any contractual or proprietary right in or to the property of First Church.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA), there was no express provision in the Book of Order prohibiting a local church from severing its connection with the denomination.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA) there was no provision in the Book of Order providing for a particular method or procedure for a local church to change its denominational affiliation. The Book of Order was silent on this subject. Historically, many churches have unilaterally withdrawn as First Church did and have kept their property; other churches have sought and obtained dismissal by presbytery. No specific method is provided in the Book of Order.

On January 24, 1977 (the date First Church voted to sever its connection with UPCUSA) the general rule was that a majority governs in the courts of UPCUSA.

ARGUMENT

I

The Court of Appeals of New York resolved the issues in the case at bar in every way consistent with the principles enunciated by this Court in *Jones v. Wolf*, 443 U.S. 595 (1979). Both Courts characterized the question as being whether a civil court may resolve such a dispute on the basis of "neutral principles of law" or whether they must defer to the resolution of an authoritarian tribunal of the hierarchical church. (443 U.S. at 780-781 and Petitioners' App. A-1).

In *Jones v. Wolf*, this Court answered that question and set forth the options available to States:

> . . . the First Amendment does not dictate that a State must follow a particular method of resolving church property disputes. Indeed, a State may adopt any one of various approaches for settling church property disputes as long as it involves no consideration of doctrinal matters. . .
>
> At least in general outline, we think the "neutral principles of law" approach is consistent with the foregoing constitutional principles. 443 U.S. at 784.

The New York Court chose to apply the "neutral principles" approach in the case at bar:

> We choose to recognize the neutral principles of law analysis and we apply it here. (Petitioners' App. A-10).

The Court of Appeals of New York saw the same advantage in the "neutral principles" approach as did this Court in *Jones v. Wolf*. This New York Court listed those same reasons in its opinion. (Petitioners' App. A-10,

A-11). Petitioners' entire argument is based on the premise that it was error for the New York Court to choose this "neutral principles" approach. We submit that under the above stated options outlined by this Court in *Jones v. Wolf,* the New York Court had every right to choose this option.

The factual similarities between the case at bar and those in *Jones v. Wolf* are striking. For instance in *Jones v. Wolf* the Presbytery appointed an Administrative Commission after the local church voted to sever its connection. That Commission declared that the minority faction was the true congregation and withdrew all authority from the majority. In response to such attempted action by Presbytery's Administrative Commission, the local church in *Jones v. Wolf* chose to ignore this action and did not appeal to a higher church court but brought an action in the civil courts. (443 U.S. at 781-782).

In the case at bar, there was no minority faction loyal to UPCUSA; but Presbytery's Commission sought to withdraw all authority from the local officers after First Church had severed its connection with UPCUSA. First Church chose to ignore this action, did not appeal to a higher church court, but brought an action in the civil courts. (Petitioners' App. A-3).

Having reviewed these factual similarities and having decided to adopt the "neutral principles" approach for the same reasons this Court set out in *Jones v. Wolf,* the New York Court then proceeded to follow the guidelines outlined by this Court in *Jones v. Wolf.* The New York Court examined:

(1) The deeds

(2) The Corporate Charter

(3) Applicable State Statutes

(4) The Constitution of UPCUSA (The Book of Order)

As to the deeds, the New York Court found:

> First, under familiar property law principles, plaintiff church held record title to the property free from any competing interests. The deeds by which plaintiff church acquired the several parcels of realty all named First Church or its trustees as grantees, their operative provisions contained no forfeiture or reversion clauses in favor of the various grantors of UPCUSA and the record does not indicate that any of the property was acquired by restrictive gift. None of the deeds include language of trust or restriction vesting a present or future interest in the Albany Presbytery or the UPCUSA. (Petitioners' App. A-11 & 12).

As to the Corporate Charter, the New York Court found:

> Turning to the local charter, plaintiff church apparently filed two certificates of incorporation, the first in 1803 and the second in 1809 and these certificates are silent on the question of how the property is to be owned. (Petitioners' App. A-12).

As to the applicable New York Statutes, the New York Court found that First Church chose to be governed by the State law prior to 1828 rather than the present Religious Corporations Law. The New York law gave First Church this option which it properly exercised. Hence the New York Court concluded:

> Indeed the fact that plaintiff church, acting through its trustees, chose not to bring itself within the scope of section 69, relying instead upon prior law giving it undisputed ownership, is evidence that ownership rests with plaintiffs. (Petitioners' App. A-12).

Finally, the New York Court, following the mandate of *Jones v. Wolf*, looked at the Constitution of UPCUSA as its provisions related to local church property. The New York Court found no provision which created an express trust in favor of UPCUSA in the local church's property. The New York Court went further to look into the possibility of an "implied" trust for UPCUSA. The New York Court concluded:

> Nor can there be an implied trust of the second type for to establish a trust there must be a sufficient manifestation of the intention to do so. (Petitioners' App. A-14 & A-15).

The New York Court found four conclusive reasons why no such intention was manifested, to wit:

> (1) First church acquired the property on its own without any funding assistance from the denominational church and there is no evidence that it intended to hold the property in trust. (Petitioners' App. A-15).
>
> (2) First Church took no action from which an intent to create a trust may be implied and it had no notice or knowledge that the Presbytery or UPCUSA claimed that an implied trust existed prior to this dispute. (Petitioners' App. A-15).
>
> (3) The trustees of First Church failed to pass a resolution bringing the church within the statutory trust provision of section 69 of the New York Religious Corporations Law and no other commitment in writing was undertaken to create one. (Petitioners' App. A-15).
>
> (4) Additionally, not only does the Book of Order contain no provision of trust, but in 1929 UPCUSA proposed an amendment to the church rules establishing a trust of all church properties for the denom-

> inational church and the amendment failed to receive the necessary votes of the Presbyteries for passage. The mere fact of First Church's association with the denominational body, even an association lasting 200 years, does not by itself support a finding that an implied trust was created. (Petitioners' App. A-15).

Petitioners argue that the New York Court of Appeals violated the First and Fourteenth Amendments to the U.S. Constitution by prohibiting UPCUSA from governing this particular local church in accordance with church law as set forth in the denomination's Constitution (the Book of Order). Petitioners cite three sections of the Book of Order which they contend were so violated. They cite Chapter XI, Sections 7, 8 and 15 as such violated sections. For clarification, the Book of Order denotes its sections by marginal notations; and these cited sections are denoted as 41.07, 41.08, and 41.15. The New York Court dealt with these identical sections in its opinion and referred to them by said marginal notation numbers. (Petitioners' App. A-13).

Petitioners further argue that the New York Court was factually incorrect when it stated that these sections are "located outside the property section of the Book of Order". (Petitioners' Brief p. 15). Petitioners contend that there is no "property section" as such in the Book of Order. Chapter XI (marginal number 41) of the Book of Order in which these cited sections appear is entitled "Of the Session". Chapter XXXII (marginal number 62) of the Book of Order, which is the property section, is entitled "Of Incorporation and of Trustees". In Appendix A, the Sections 41.08 and 41.15 as well as Sections 62.04 and 62.08 are quoted verbatim so that this Court may see for itself which are the sections of the Book of Order that deal with local church property.

The New York Court looked at these specific sections upon which Petitioners rely and concluded that they did not create a "beneficial interest" in UPCUSA in the local church property of First Church. After reviewing these very sections, the New York Court held:

> These provisions, relied upon by the concurring Justice at the Appellate Division as establishing an intent to create a beneficial interest in the denominational church, are located outside the property section of the Book of Order. They deal with church government and relate only indirectly to the control of property. They set forth the mechanism of church government in the event of a church dispute and any inquiry into their meaning by a court is constitutionally foreclosed because it would require the court to choose between the insurgent Session and the commission or "replacement Session." Moreover, the authority of the Session to direct control of property in such a dispute is belied by the constitution itself in view of the fact that other sections of the Book ascribe to the Session power which is purely spiritual (Part II, Chapter V, section 35.03). In view of this ambiguity, these provisions should be discounted, leaving nothing in the Book of Order to support defendants' position. (Petitioners' App. A-13 & A-14).

Also, the PCUS Constitution (Book of Church Order) which this Court considered in *Jones v. Wolf* had very similar provisions. We have set out these comparable provisions in Appendix A. Specifically, UPCUSA Sections 41.07, 41.08, and 41.15 (which are the sections relied upon by Petitioners) do have comparable sections in the PCUS Book of Church Order. It should be noted that the distinctions between these sections of the UPCUSA

and PCUS Constitutions are not great; in fact, the two denominations have now merged. Let us now look at comparable sections of the two constitutions.

UPCUSA

Sections 41.07 and 41.08 provide that the Session of a local church has authority over worship and use of local church buildings.

Section 41.15 provides that the presbytery can replace the Session which is composed of Elders in a local church.

PCUS

Section 15-7(10) gives Church Session power; "to exercise, in accordance with the directory for worship, authority over the time and place of the preaching of word and the administration of the Lord's Supper, over all other religious services, over the music in the services and *over the uses to which the church building and associated properties may be put*". (Emphasis added).

Section 16-7(2) gives Presbytery power: "To assume original jurisdiction in cases in which a Church Session cannot exercise its authority."

Section 16-7(5) gives Presbytery power: "to visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them. When necessary for the welfare of the church *the presbytery may dissolve the active relationship between an Elder or Deacon and the Church*". (Emphasis added).

Section 19-2 gives Presbytery power to appoint: "A Commission is given responsibility to make decisions

> for the court in circumstances where it is impractical or inexpedient for the entire court to act. The appointment court shall state specifically the scope of the power given to a Commission.
>
> A Commission may be erected to perform either administrative or judicial functions. The administrative functions ordinarily entrusted to a Commission are: (1) to visit portions of the Church affected with disorder to inquire into and settle the difficulties therein. . ."

In its initial decision in *Jones v. Wolf,* the Georgia Supreme Court looked at the property sections of the PCUS Book of Church Order, and then looked at the sections cited above and discarded them, as it noted:

> Appellants cite other sections of the Book of Order pertaining to church courts. These deal with faith and the internal structure of the church *but do not deal with property rights.* 243 S.E. 2d 860 at 863. (Emphasis added).

This Georgia case then went to the U. S. Supreme Court and back to the Supreme Court of Georgia. Neither of these Courts considered the comparable sections as binding on the civil courts nor determinate of property rights. The reason is obvious: these sections deal with ecclesiastical powers and jurisdiction and not with property rights.

If this Court had applied the judicial principle of "deference", upon which Petitioners insist here, then the local church property in *Jones v. Wolf* would have been awarded to the denomination rather than to a majority faction of the local church. If the New York Court violated the First and Fourteenth Amendment rights of Petitioners, then similar violations occurred in rulings by this Court in *Jones v. Wolf* and in the highest courts in

California (*Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, 152 Cal. Rptr. 854, *cert. denied*, 444 U.S. 974 (1979)) and South Dakota (*Foss v. Dykstra*, 342 N.W. 2d 220 (S.D. 1983)) in which local churches were awarded property, against UPCUSA claims, following the neutral principles approach.

Petitioners' major argument is that the civil court's decision prohibits UPCUSA from exercising control over the local church's property by the appointment of an Administrative Commission to take over the session of the local church and thereby seize control of the property. The New York Court's decision does not "prohibit" UPCUSA from doing anything it desires except to take over the property of the local church which it does not own and over which it has no further jurisdiction. Thus in the case at bar, as in *Jones v. Wolf*, the civil court did not deny the denomination any ecclesiastical right it had under its Constitution. It did enjoin the denomination from interfering with local church property in which the denomination has no right of ownership, express or implied. And it did enjoin the denomination, in both cases, from interfering with the right of free exercise of religion by a local church over which the denomination had no further jurisdiction.

II

Petitioners contend that the decision of the Court of Appeals of New York is directly contrary to this Court's decisions in *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976).

We submit that *Kedroff* and *Kreshik* hold that a State cannot do, by either legislative action or judicial

fiat, for the parties what the parties have not first provided for between themselves in their contract with each other. In the case at bar, UPCUSA has not been able to produce any document, as an agreement between it and First Church, which gives UPCUSA any right, express or implied, in the local property of First Church. Neither has UPCUSA been able to produce any document which prohibits First Church from severing its ecclesiastical connection with UPCUSA or which imposes any penalty or forfeiture of property upon First Church upon such a severance. Hence to bind the local property of First Church to UPCUSA solely by virtue of State action (judicial in this instance) would clearly violate the judicial principle of both *Kedroff* and *Kreshik*. This would constitute an establishment of religion by the State for the denomination and a denial of the free exercise of religion to the members of First Church.

Serbian may also be distinguished from the case at bar for there the issue was principally an ecclesiastical issue over the right to appoint a bishop and here the issue is a civil issue over the ownership and control of local church property.

In *Serbian*, a hierarchical church, acting through its hierarchical bodies, defrocked the Bishop of a diocese and reorganized the diocese into three dioceses. The defrocked Bishop filed suit claiming that the church had acted improperly in recognizing the diocese and that his defrockment should be set aside as arbitrary because the church proceeding against him had not been conducted in accordance with the church's constitution. The Court decided that although the title to diocesan property was vested in the Bishop by virtue of his office, the real issue was a religious dispute over who would be the Bishop and not a civil dispute over the ownership of property.

Mr. Justice Brennan wrote the opinion of this Court and stated:

> Thus the case essentially involves not a church property dispute, but a religious dispute the resolution of which under our cases is for ecclesiastical and not civil tribunals. 426 U.S. at 709.

Further, it is important to note what facts were *not* present in *Serbian* and how the denomination there involved has been dealt with in the light of *Jones v. Wolf*. In a recent opinion by the Supreme Court of Minnesota in the case of *Piletich, et al. v. Deretich, et al.*, 328 N.W. 2d 696 (1982), that Court dealt with the same Serbian Eastern Orthodox denomination that was involved in the *Serbian* case that was before the United States Supreme Court. The Minnesota Supreme Court first noted that the structural relationship between the denomination and a local congregation was not an issue in *Serbian* and was not dealt with by the United States Supreme Court in that case. (328 N.W. 2d at 699). After reviewing the structure of the denomination to determine the congregation's relationship to it, the Minnesota Supreme Court held as follows:

> We find, therefore, that this general church is not "heirarchical" with respect to resolution of intra congregational disputes over local property or members qualification. 328 N.W. 2d at 699-700.

The Minnesota Supreme Court then proceeded to review the various provisions of the denomination's constitution and determined that although this was a hierarchical church in some respects it was congregational as it related to the ownership and control of local church property. (328 N.W. 2d at 702). This was similar to the conclusion reached by the trial judge in the case at Bar. (Petitioners' App. A-20).

Every Court that has considered this case has concluded that the central issue was a civil issue of property rights and therefore, a proper issue for determination by a civil court. After hearing the witnesses and the arguments and reviewing the evidence and briefs presented at the trial of this cause, Judge J. Raymond Amyot found that the "core issue" in this case was "the legal ownership of property now held in the name of the Plaintiff church". (Petitioners' App. A-20). Justice T. Paul Kane, writing for the majority in the Supreme Court Appellate Division, held that ". . . it is the beneficial use and application of that property which is at issue". (Petitioners' App. A-28). Justice Simons, writing an opinion in which all justices of the Court of Appeals concurred, stated:

> Inasmuch as "the State has a legitimate interest in resolving property disputes and a civil court is a property forum for that resolution" a determination of the issue submitted to us is appropriate (see *Presbyterian Church v. Hull Church* 393 U.S. 440). (Pettioners' App. A-7).

Thus, the Petitioners' reliance on *Serbian* for the proposition that strict deference is required in resolving disputes between a local congregation and a generally hierarchical denomination is misplaced. In fact, a review of all cases leads to the inescapable conclusion that civil courts must review the contract between the parties as it is contained in their constitution; and a failure to do so and to give effect to those documents is an absolute violation of both the free exercise and establishment clauses of the First Amendment to the United States Constitution. Under this rule the New York Court made the limited review of the UPCUSA Constitution as prescribed in *Serbian* and gave effect to such contract between the parties.

CONCLUSION

Jones v. Wolf stands for the proposition that state courts may utilize the neutral principles approach of resolving church property disputes so long as they do not violate the precept that no court may delve into ecclesiastical matters. The Court of Appeals of New York had the constitutional right to choose the neutral principles approach in resolving this dispute between UPCUSA and First Church over the ownership and control of local church property. The Court of Appeals of New York properly applied these neutral principles as set out in *Jones v. Wolf*. Therefore, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WARREN JACKSON WILLIAMSON
(Counsel of Record)
P. O. Box 467
601 East Commerce Street
Greenville, Alabama 36037

ROBERT S. TRIEBLE, ESQUIRE
SIMON, TRIEBLE, MCNAMARA & RIDER
P. O. Box 361
57 West High Street
Ballston Spa, New York 12020
Attorneys for Respondents

APPENDIX A

SELECTED SECTIONS OF THE BOOK OF ORDER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

AUTHORITY OF SESSION

41.08 8. The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session. It may add active members to any of its committees and may set up special committees of active members responsible to it.

41.15 15. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

OF INCORPORATION AND TRUSTEES

62.04 4. Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

62.08 8. Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of presbytery as herein provided.

The trustees of a particular church shall exercise any other powers or authorities vested in them by civil law in conformity with the actions of the session as conveyed to them from time to time. They shall also perform such other duties relating to the property or finances of the church as may be delegated to them by the session. The trustees shall submit a financial statement of all matters committed to them and a report of their proceedings to the session for review at least once a year and at other times upon request of the session.

While trustees, like other boards and bodies of a particular church, hold authority subordinate to

that of the session, the office of trustee is one of dignity and responsibility, requiring ability and devotion. Trustees, upon their election, shall be properly recognized at a service of worship and set apart to the discharge of their responsibility by prayer.

SELECTED SECTIONS OF THE BOOK OF CHURCH ORDER OF PRESBYTERIAN CHURCH IN THE UNITED STATES (the denomination involved in *Jones v. Wolf*)

CHAPTER 6 which relates to church property.

CHAPTER 6

Incorporation and Property of a Particular Church

§ 6-1. FOR AN UNINCORPORATED CHURCH

A particular church which is not incorporated, desiring to elect trustees, may select from among its confirmed membership trustees or officers of like nature who shall have the power and authority to buy, sell, or mortgage property for the church to accept and execute deeds as such trustees, to hold and defend titles to the same, to manage any permanent special funds entrusted to them for the furtherance of the purposes of the church. In the fulfillment of their duties such trustees shall subject always to the authority, and shall act solely under the instructions, of the congregation which they serve as trustees. The powers and duties of such trustees must not infringe upon the powers or duties of the Session or of the Board of Deacons. Such trustees shall be elected in regularly constituted congregational meetings.

§ 6-2. FOR AN INCORPORATED CHURCH

If a particular church is incorporated, the provisions of its charter and bylaws must always be in accord with the Constitution of the Presbyterian Church in the United States. If the congregation is an incorporated body, all the communing members on the active roll of that church shall be members of the corporation. The officers of the corporation, whether they be given the title "Trustee" or some other title, shall be elected from among the members of the corporation in a regularly constituted congregational meeting. The powers and duties of such officers must not infringe upon the powers and duties of the Session or of the Board of Deacons. All funds collected for the support and expense of the church and for the benevolent purposes of the church shall be controlled and disbursed by the Session and the Board of Deacons as their relative authorities may from time to time be established and defined. To the officers of the corporation may be given by the charter and bylaws of the corporation any or all of the following responsibilities: The buying, selling, and mortgaging of the property for the church, the acquiring and conveying title to such property, the holding and defending title to the same, the managing of any permanent special funds entrusted to them for the furtherance of the purposes of the church, provided that such duties do not infringe upon the powers and duties of the Session or of the Board of Deacons. In buying, selling, and mortgaging real property such officers shall act solely under the authority of the corporation, granted in a duly constituted meeting of the corporation.

Section 15-6 deals with the authority of the local Church Session. § 15-6(10) specifically deals with authority over church buildings.

§ 15-6 The Church Session is charged with maintaining the spiritual government of the church. For this purpose it has power:

(10) To exercise, in accordance with the Directory for Worship, authority over the time and place of the preaching of the Word and of the administration of the Lord's Supper, over all other religious services, over the music in the services, and over the uses to which the church building and associated properties may be put.

Section 16-7 deals with powers of Presbytery.

Section 16-7(2) through 16-7(9) gives powers to dissolve Church Session and dissolve relationship between an Elder and local church as §41.15 of UPCUSA Book of Order.

§ 16-7 The Presbytery has power:

(1) To receive and decide references, appeals and complaints brought before it according to constitutional procedures.

(2) To assume original jurisdiction in cases in which a Church Session cannot exercise its authority.

(5) To visit churches for the purpose of inquiring into and redressing the evils that may have arisen in them. When necessary for the welfare of the Church the Presbytery may dissolve the active relationship between an Elder or Deacon and the church, provided there has been a hearing which affords procedural safeguards as in cases of process.

§ 19-2 provides for Presbytery to appoint an Administrative Commission to replace the Session:

> A Commission is given responsibility to make decisions for the court in circumstances where it is impractical or inexpedient for the entire court to act. The appointment court shall state specifically the scope of the power given tc a Commission.
>
> A Commission may be erected to perform either administrative or judicial functions. The administrative functions ordinarily entrusted to a Commission are: (1) to visit portions of the Church affected with disorder to inquire into and settle the difficulties therein. . .

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,

Petitioners,

vs.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, *et al.*,

Respondents.

CONSENT TO FILING OF *AMICUS CURIAE* BRIEF
and
BRIEF OF *AMICUS CURIAE*
IN SUPPORT OF REVERSAL

MICHAEL I. SMITH*
1730 "K" Street
Washington, D.C. 20006
(202) 331-8550

Of Counsel:
FREEDMAN, LEVY, KROLL & SIMONDS

WILLIAM J. O'SHEA
598 Madison Avenue
New York, New York 10022
(212) 752-6442
Attorney for Amicus Curiae

*Counsel of Record

CONSENT TO FILING OF BRIEF *AMICUS CURIAE*

Pursuant to the provisions of Rule 36, *amicus curiae* William C. Brownson submits this brief with the consent of counsel for Petitioners and Respondents herein.

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CONSENT TO FILING OF *AMICUS CURIAE* BRIEF

THE STATUS OF *AMICUS CURIAE*

William C. Brownson, the *amicus curiae* who files this brief in support of Petitioners herein, is President of the General Synod of the Reformed Church in America ("RCA"). As President, he is Chief Executive Officer of the General Synod of the RCA.

The General Synod of the RCA is the highest assembly and judicatory of the Reformed Church in America which consists of 943 local congregations with a combined membership of 353,184.

The Reformed Church in America is a continuation in the United States of the Dutch Reformed Church, which was the official state church of Holland. In the early years of the United

States, it was known as the Reformed Protestant Dutch Church of North America. In 1819 it changed its name to Reformed Dutch Church and in 1867 to the Reformed Church in America, its present name.

Based on a system of representation, the Reformed Church in America, very much like the petitioner United Presbyterian Church, operates at four levels of ecclesiastical authority:

(1) The Consistory, which is the governing body of a local church;

(2) The Classis, which is comprised of member ministers and an elder(s) from each local church;

(3) The Particular Synod, to which the Classis sends delegates; and

(4) The general Synod, which is the final ecclesiastical and appellate authority and to which each Classis sends delegates.

At the present time there are forty-five (45) Classes and six (6) Particular Synods which exercise authority in the United States and Canada.

Amicus Curiae considers the issues presented by this case to be of critical importance to his church and to all other churches whose governmental structures have been defined by this Court and other courts of inferior jurisdiction as "hierarchical churches". *Amicus Curiae* believes the decision of the Court of Appeals of the State of New York in the instant case offends the Constitution of the United States as interpreted by the decisions of this Court, and therefore the decision of the court below should be reversed.

THE OPINION BELOW

The opinion of the Court of Appeals of the State of New York is printed in the Appendix to the Petition at A-1 and is reported at 62 N.Y.2d 110, 476 N.Y.S.2d 86, and 464 N.E.2d 454. The Order of the Court of Appeals of New York denying rehearing, (App. A-41) is not reported.

JURISDICTION

On May 15, 1984, the judgment of the Court of Appeals of New York was entered. The Order of the Court of Appeals of New York denying a timely petition for rehearing was entered on July 5, 1984. The jurisdiction of this court is invoked under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. Do the provisions of the First and Fourteenth Amendments of the United States Constitution, as interpreted by this Court in *Jones v. Wolf*, 443 U.S. 595 (1979) and earlier in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976) and *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952) prohibit civil courts from enjoining duly constituted ecclesiastical bodies from exercising powers expressly given to them under the constitutions of said denominations on the issue of governance of congregations and use of real property within which said congregations exercise their worship?

2. Do the First and Fourteenth Amendments require that the protection of law be applied equally among hierarchical religious denominations to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine? *Serbian Eastern Orthodox Diocese v. Milivojevich* 424 U.S. at 721-722.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

U.S. Const. Amend. XIV, Sec. 1:

> "... nor should any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The issue before the courts of the State of New York was whether the congregation of a local Presbyterian church could unilaterally, and without permission of its religious superiors, withdraw for doctrinal reasons, from the denomination and concommitantly, prohibit the denominational hierarchy from interfering with the continued use and enjoyment of the church property. In short, whether a local church could, utilizing the offices of the civil judiciary, create and maintain a schismatic situation notwithstanding procedures for review and redress of denominational questions contained in the denomination's governing instrument.

The Court of Appeals has sustained the decision of the court *nisi prius* which denied the right of a civil court to intervene in matters of religious polity and governance and yet would preserve to such schismatic congregation, *in futuro*, title to its real property and assets through the issuance of a permanent injunction against its religious hierarchical superiors. Thus, the decision of the New York Court leaves the petitioners with the possibility of a Phyrric victory whereunder the local church could be found to be in violation of the provisions of the "Book of Order" constituting the denomination's governing instrument and yet remain free, as a separate church, to hold title to church property and dispose of the same at will.

Respondent, the First Presbyterian Church of Schenectady ("First Church") was organized in 1760 and has been a particular church of the United Presbyterian Church since at least 1770. During this entire period it has been subject to the jurisdiction and governance of the Presbytery of Albany and its predecessor presbyteries. First Church, on January 24th 1977, voted to "sever" or withdraw from the Presbytery of Albany and to maintain control and ownership of the real property and assets underlying the church. This unilateral action occurred by virtue of philosophical discontent on the part of the local church, which first arose in 1976, out of the denomination's support of positions and activities considered violative of fundamental belief and principles of Presbyterianism by the local church. First Church, in that instance, followed the denominational

rules of governance and petitioned the Presbytery of Albany to be dismissed to another denomination. Following ecclesiastical due process that petition was denied in March of 1976 and thereafter, again pursuant to the provisions of the Book of Order, petitioner Presbytery established an administrative commission to investigate conditions at First Church.

Immediately prior to the rendering of a decision by the investigative commission on February 1, 1977, the action by First Church of January 24, 1977 was taken. The administrative comissions report and recommendations were that First Church's governing body be supplanted and the petitioner Presbytery thereafter directed the governing body of the First Church to cease action until directed otherwise and in furtherance of its mandate established a further administrative commission giving to it, again pursuant to established procedure, all the powers of the now supplanted First Church.

In direct violation of the provisions of the Presbyterian constitution, the "Book of Order", providing for appellate review within the hierarchical structure, respondents sought a declaratory action by a District Court of the United States. Such relief was denied as being violative of the Constitutional provisions before this Court and thereafter respondents initiated an action in the courts of the State of New York resulting in the decision of the Court of Appeals of the State of New York sought to be reviewed herein.

ARGUMENT

POINT I

THE DECISION OF THE COURT OF APPEALS VIOLATES FIRST AMENDMENT REQURIEMENTS

By treating a serious philosophical dispute between a local church and its hierarchical judicatories as one merely involving title to real estate, the Court of Appeals has in effect, permitted a local church to establish itself as a separate ecclesiastical institution, notwithstanding over 200 years of prior acquiesence in Presbyterian denominational control. Thus, by granting a permanent injunction against an appellate judicatory,

here the Presbytery of Albany, from interfering with title, ownership or use of the local church, the New York Court of Appeals has in effect emasculated petitioners' form of governance. For two centuries, the respondent First Church adopted and acquiesed in the forms of governance by the hierarchical denomination involving allegiance through the Presbytery, Synod and General Assembly. As a Presbyterian church it acknowledged governance through the Book of Order and its contents. Even as late as 1976 when, apparently disturbed by what it felt to be a divergence from Presbyterian tenets and heritage, First Church sought relief through petition to the Presbytery in accordance with the provisions of the Book of Order. Following the provisions of said Book of Order, the Presbytery of Albany, being the next appellate judicatory, formed a commission with powers to investigate the allegations of the session and to advise the Presbytery as to appropriate action to be taken.

One can only assume, from the timing of the motion to "sever", less than one week prior to the publication of the commission's findings and report, that the local church, respondent herein, chose at that point to become schismatic and to break away from its heritage.

The concept of ecclesiastical governance and jurisdiction has long been recognized as inviolate by this Court, for in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 724:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

In the instant case, the Presbytery of Albany, acting on the report of its commission, both bodies constituting institutions whose existence, character or judicial qualifications have never been questioned by respondents herein duly found that the local church was in violation of Presbyterian tenets and good order. The Court of Appeals of the State of New York ignores such finding of a duly constituted ecclesiastical judicatory and seizes upon the misapplication of the "neutral principles of law" theory to establish the respondent church independent of its Presbyterial hierarchy.

As was noted by Mr. Justice Powell in his dissent in *Jones v. Wolf*, 443 U.S. at 613:

> The Georgia [here New York] courts as a matter of state law, granted control to the schismatic faction, and thereby effectively reversed the doctrinal decision of the church courts. This indirect interference of the civil courts with the resolution of religious disputes within the church is no less proscribed by the First Amendment than is the direct decision of questions of doctrine and practice.

In the instant case the decision of the Court of Appeals forestalls an effective review of the matter by the appellate judicatories of the Presbyterian church and thus thwarts such religious polity.

II. EQUAL PROTECTION OF THE LAW IS DENIED BY THE DECISION OF THE NEW YORK COURT

"What is at stake here is the power to exercise religious authority. That is the essence of this controversy." Writing for himself and Justices Black and Douglas, the late Justice Frankfurter so commented in his concurring opinion in the case of *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. at 121. Somewhat later in his opinion he notes, at page 123, and we paraphrase,

> a legislature [here Court] is not free to vest in a schismatic head the means of acting under the authority of his old church, by affording him the

> religious power which the use and occupancy of St. Nicholas Cathedral [here First Church] make possible.

The issue before this Court is not that of title to land but the right of an ecclesiastical entity to govern its subordinates and by virtue of its right of governance therefore its right to control the use of religious edifices.

The question of right to use assets of religious institutions flows naturally as a result of schismatic discord, for no one side will freely leave the walls from which it preaches. Issues as to which ecclesiastical entity was entitled, by virtue of legitimate governance, to the use and occupancy of real property in the State of New York have twice come before this Court in *Kedroff v. Saint Nicholas Cathedral, id* at 95, and *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960). This Court in both instances reversed the decisions of the Court of Appeals in New York, ruling that the State may not, by legislation or by common law decision, transfer hierarchical control of a denomination and the attendant control over church property from one group to another. Similarly, this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 724-725, reversed the holding of the Supreme Court of Illinois, finding that the latter had unconstitutionally substituted its own interpretation of the denomination's constitution and polity for the interpretation of the ecclesiastical tribunals.

It is respectfully submitted that no clearer corollary exists than is present here, where the Presbytery of Albany replaced the Session of the First Church. In other words, is the authority of the Presbytery of Albany any less valid and recognizable by this Court than the ecclesiastical authority of the Holy Assembly of Bishops and Holy Synod in *Serbian* and that of the Moscow Patriarch in *Kedroff* and *Kreschik*? As the majority of the *Kedroff* Court noted, citing the New York Court, "There is no problem of title. It is in the appellee corporation. The issue is right of use." 344 U.S. at 96 n.1 (1952). Here too, the Presbytery has, by virtue of the Book of Order, the ecclesiastical power to ordain the use of the property.

It is respectfully submitted that the Court of Appeals by straining to find a pure question of *title* to real estate has sought to escape the issue of "use" and compliance with the rule of "deference" first established in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872) wherein this Court held that:

> whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them on their application to the case before them. *Id.* at 727.

This Court found in its ruling in *Kedroff*, 344 U.S. at 120-121:

> There are occasions when civil courts must draw lines between the responsibility of church and state for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church customs or law on ecclesiastical issues, the church rule controls.

See also *Jones v. Wolf*, 443 U.S. 595 (1979), *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-449 (1969).

The concept of "deference" was extended to questions of Church government or polity as well as to issues of religious faith or doctrine by this Court in its decision in *Jones v. Wolf*, 443 U.S. at 602, and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. at 709-710.

Here the Court of Appeals pays lip service to the rule of "deference" by acknowledging that it may not grant a declaratory judgment of independence to the First Church and yet, accomplishes the same effect by issuing a permanent injunction in favor of said ecclesiastical body. Such action we submit, effectively neutralizes any higher judicatory from further review of the questions of polity and governance permitted by *Kedroff*, *Jones*, and *Serbian*. As noted by Presiding Justice Mahoney, of the Appellate Division, Third Department, in his

concurring opinion for modification of the decision *nisi prius* (A-31):

> civil courts *must*, therefore, be bound by the ecclesiastical determination made within the governmental framework of the general church that the local 'session' is not wisely managing its own affairs. That being the case, civil courts may then read the constitution in a secular manner which will not offend any constitutional principles.

The Court of Appeals turns a blind eye to the ecclesiastical necessity and right for such review by holding to the illusory question of *title* to real property. Here church rule is stymied for no Presbyterian judicatory can effectively rule on the future governance and thus *use* of the First Church property. The schismatic act of the session of First Church is therefore confirmed, contrary to established law.

Such decision of the Court of Appeals of the State of New York denies United Presbyterian Church and the Presbytery of Albany, petitioners herein, the free exercise of religion guaranteed by the First Amendment and further, does not provide the United Presbyterian Church the equal protection of laws mandated by this Court in its earlier holdings and the Fourteenth Amendment.

The issues involved herein are critical not only to petitioner United Presbyterian Church but for all other hierarchical churches in the United States.

CONCLUSION

For all the reasons set forth above, *amicus curiae*, William C. Brownson respectfully requests this Court to entertain the petition of United Presbyterian Church et al. for a writ of certiorari and to reverse the decision below.

Respectfully submitted,

MICHAEL I. SMITH
1730 "K" Street N.W.
Washington, D.C. 20006

Of Counsel
FREEDMAN LEVY KROLL & SIMONDS

WILLIAM J. O'SHEA
598 Madison Avenue
New York, New York 10022
Attorney for Amicus Curiae

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On Petition For Writ Of Certiorari To The Court Of Appeals Of New York

AMICUS BRIEF OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH

IN SUPPORT OF REVERSAL

SAMUEL W. WITWER, SR.
SAMUEL W. WITWER, JR.
JOHN D. HASTINGS
125 South Wacker Drive
Suite 2700
Chicago, Illinois 60606
(312) 332-6000

Attorneys for Amicus Curiae

Of Counsel:

WITWER, MORAN, BURLAGE & WITWER
125 South Wacker Drive, Suite 2700
Chicago, Illinois 60606
(312) 332-6000

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

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On Petition For Writ Of Certiorari To The Court Of Appeals Of New York

AMICUS BRIEF OF THE GENERAL COUNCIL ON FINANCE AND ADMINISTRATION OF THE UNITED METHODIST CHURCH

The General Council on Finance and Administration of the United Methodist Church, respectfully submits this *amicus curiae* brief in support of the Petition of the United Presbyterian Church and the Presbytery of Albany for a writ of certiorari in the above-captioned case. The filing of this brief has been consented to by all the parties pursuant to Rule 36 of this Court and proof of such consent has been filed with the Clerk of the Court.

INTEREST OF AMICUS CURIAE

The General Council on Finance and Administration of the United Methodist Church, ("GCFA"), an Illinois corporation not-for-profit, has among its duties and concerns the safe-guarding and protection of certain legal interests of the United Methodist Church ("UMC"), an international Protestant religious denomination and movement with approximately 10 million members and 43,000 local churches.[1]

For the reasons hereinafter stated, GCFA believes the decision of the Court of Appeals of New York misinterprets and erroneously applies the Court's decision in *Jones v. Wolf*, 443 U.S. 595 (1979) which, if allowed to stand, will seriously threaten constitutionally protected religious freedoms of connectional and hierarchical churches as well as other establishments of religion. Amicus curiae urges the Court to grant its writ of certiorari to correct such errors; also, to provide needed guidance to the many state and federal courts which increasingly are being called upon to give proper application to the "neutral principles of law" approaches authorized by *Jones*.

While the United Methodist polity is less unified and authoritarian than that of Presbyterianism, UMC is, by self-definition, a "connectional" church. Many courts have classified UMC as a "connectional and hierarchical" de-

[1] GCFA's duties and concerns with regard to legal matters derive from Par. 907(4) of the *Book of Discipline* of the United Methodist Church. The *Book of Discipline* contains the constitution and basic legislation of United Methodism and constitutes the pronouncement of the highest authority or judicatory in the denomination. It is the evolution of over 200 years of Church law and usage.

nomination. By tradition, trust clauses, and provisions of its fundamental law, United Methodism has sought to preserve the continued use of local church properties for its general denominational purposes and to prevent misappropriation of such properties by local factions or dissident groups. Local church adherence to the general denominational objectives and purposes is essential to the ongoing role of UMC as a connectional and hierarchical church as distinguished from the "congregational" system in which the local church is self-governing and independent.

Periodically, appropriate officials at the Annual Conference level[2] of UMC have found it necessary to litigate to uphold such provisions against schismatic attempts to apply local church property to separate factional uses. Methodist property cases have not typically involved inquiry into or enforcement of the decisions of church tribunals as in many of the Presbyterian cases. See, e.g., *Brady v. Reiner*, 198 S.E.2d 812 (W.Va., 1973). However, the courts have uniformly given cognizance to the internal disciplinary arrangements of United Methodism as set forth in its *Book of Discipline*. In so doing, they have applied principles first enunciated in *Watson v. Jones*, 80 U.S. (13 Wall) 679 (1872); and subsequently in its progeny, *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960), and *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426

[2] The annual conferences are the fundamental constitutional bodies of United Methodism operating within prescribed geographical areas in the United States and abroad. They are in some respects comparable to Presbyteries, although United Methodist units, in general, are not layered vertically in an ascending order of authority as in Presbyterianism. UMC is not incorporated nor is it a jural entity in any quasi-corporate or other form.

U.S. 696 (1976). Most recently, the viability of these cases was reaffirmed in *Jones* in the context of "neutral principles of law" approaches therein discussed.

Thus in *Jones*, the Court held that while "neutral principles of law," in certain circumstances, could be the criteria of decision of property disputes consistently with constitutional principles nevertheless:

> "It is also clear, however, that 'the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.' *Id.*, at 449, 21 L.Ed.2d 658, 89 S.Ct. 601. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice. *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 710, 49 L.Ed.2d 151, 96 S.Ct. 2372 (1976). . . . As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization. *Serbian Orthodox Diocese*, 426 U.S., at 724-725, 49 L.Ed.2d 151, 96 S.Ct. 2372; *Watson v. Jones*, 13 Wall 679, 733-734, 20 L.Ed. 666 (1872)."
>
> [443 U.S. 595 at 602]

The Court also made it clear that a connectional or hierarchical church may provide, in its "constitution" or other governing book of discipline or order, for the resolution of property disputes in some legally cognizable form. Such arrangements, whether by trust, contract, settled practices and understanding indicated by the parties, must exist prior to the dispute.

> "At any time before the dispute erupts, the parties can insure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate

charter to include a right of revision or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal, *and the civil courts will be bound to give effect to the result indicated by the parties provided it is embodied in some legally cognizable form.*" (Emphasis supplied)

[443 U.S. 595 at 604]

It is under these guidelines from *Jones* that the dispute between the local church and the hierarchical religious denomination must be resolved.

STATEMENT OF THE CASE

The dispute in its genesis and continuing nature is one involving the doctrine and practices of a hierarchical religious denomination.[3] The Appellate Division's description of the dispute is most accurately stated (A-24):

> "This matter concerns the dispute between a local church and its regional Presbytery over the power of an administrative commission appointed by the Presbytery to control the affairs and property of the local church . . . ."

The "power" referred to is conferred by the constitution of the United Presbyterian Church, U.S.A., a hierarchical religious denomination.

---

[3] "It arose when First Church withdrew from the denominational church because of a disagreement over UPCUSA's financial support of radical political groups and individuals." (A-1) [Such references herein are to the Appendix to the Petition for Writ of Certiorari.]

There is no question at all of the legal title of the property occupied by that local church since title is in the non-profit corporation incorporated in 1803 by the local church in accordance with the polity and practice of the hierarchical church. The trustees of that non-profit corporation are, under the Presbyterian constitution, "subject to the superior authority and direction of the session of the local church" (Petition, p. 5).

The history of the intra-church dispute is not adequately described in the opinion of the Court of Appeals. It is fully and well stated by the Appellate Division (A-25):

> "[P]rior to January, 1977, as a result of disenchantment and discontent with what is considered the policies and activities of defendant United Presbyterian Church in the United States of America (UPCUSA), plaintiff petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied and an administrative commission was instructed to investigate the actions of the local Session, the governing body of plaintiff church elected by the members of its congregation. However, before said commission rendered its report, plaintiff church, on January 24, 1977, at its annual meeting, adopted a resolution severing relations with defendants and retaining title to all property both real and personal then held or administered by it. On February 1, 1977, the investigating commission made its report to the Presbytery, recommending removal of the local Session as the governing body of the First Presbyterian Church of Schenectady and the appointment of another administrative commission with full power of the Session to act in its place. The Presbytery acted in accordance with the recommendation . . . . There was no administrative appeal taken by plaintiff church or any of its members through the hierarchy of defendants following this ac-

> tion; rather, plaintiffs chose to ignore or disobey directives of the commission and pursued their functions without acceptance of or submission to the authority of defendants. . . ."

On April 17, 1977, the seceders filed this suit seeking a declaratory judgment that the local church is independent of the denominational church and asking for an injunction against any interference by the denomination and its Presbytery, with respect to the use of the local church property. The United Presbyterian denomination and its Presbytery, in turn, counterclaimed seeking an injunction against interference with the activities of the Presbytery through its Administrative Commission in maintaining the local church as an ongoing United Presbyterian Church and in controlling the use of its properties in accordance with the *Book of Order*.

The trial court dismissed plaintiffs' request for declaratory relief and denied defendants' counterclaim but granted the permanent injunction sought by dissenters. The Appellate Division of the New York Supreme Court reversed and granted the counterclaim. The Court of Appeals reinstated the order of the trial court. That court properly denied plaintiffs' request for declaratory relief, holding that such action would require a constitutionally impermissible inquiry with respect to the dispute and over the plaintiffs' withdrawal from the denomination; nevertheless, the court permitted an injunction to issue against the United Presbyterian Church and the Presbytery restraining them from any interference with plaintiffs' use of the local property.

The Court of Appeals denied the petition for rehearing on July 5, 1984 and the petition for writ of certiorari followed.

SUMMARY OF ARGUMENT

The dispute in this case is one of doctrine and practice of a hierarchical religious denomination also involving the question of whether a replacement Session of the local church created by the Presbytery now possesses the full power of the prior elected Session to control the use of the local church property and to direct its affairs. The Court below erred in failing to defer to the decision of a commission appointed by the Presbytery pursuant to the provisions of the Presbyterian denomination's constitution in its *Book of Order* and in failing to give effect to provisions thereof which pertain to the control of the use of the local properties. Instead, the Court erroneously treated the question of property control and use as severable from the total dispute. Thus, the Court assumed the question at issue, namely, the authority and right of the plaintiffs to unilaterally withdraw from the denomination and to take with them all local Presbyterian properties.

While correctly ruling that a civil court may not intrude into the religious area to decide which of two competing bodies is the controlling Session of the local church, the court below erroneously denied the counterclaim of defendants and entered a permanent injunction after deciding for itself the meaning and effect of the constitutional provisions in the *Book of Order* of the United Presbyterian Church, U.S.A. The court below thereby violated the controlling principles of *Serbian Orthodox Diocese* and *Jones v. Wolf.*

The grant of a permanent injunction against the denomination and its Presbytery prohibiting them from con-

trolling the use of the properties of the local church was an interference with the free exercise of religion by the hierarchical denomination and its Presbytery, in violation of the First and Fourteenth Amendments of the United States Constitution.

ARGUMENT

A. The Dispute Involves Doctrine And Practice Of The Hierarchical Denomination And, Accordingly, Required Judicial Deference To The Decision Of The Presbytery, Its Commission And The Church Constitution, Pursuant To *Serbian Orthodox Diocese* And *Jones v. Wolf.*

While the Court below correctly denied plaintiffs' first demand for relief as impermissibly drawing civil courts into religious entanglements, the Court next exhibited no reluctance in redefining the dispute as one simply limited to a question of title to property. It did this because on January 24, 1977, plaintiffs used self-help in unilaterally declaring their withdrawal and secession from the denomination, taking with them the church properties. This was in defiance of the decision of the Presbytery and its Commission from which no higher appeals to church judicatories were pursued. The court thus disregarded the decision of the Presbytery which had earlier denied plaintiffs' petition to be dismissed to another denomination. By redefinition of the dispute, the court sought a means of avoiding requirements of *Serbian Orthodox Diocese* and *Jones.*

Because the withdrawal resolution was adopted by the then Session of First Church (while the dispute was pend-

ing before the Presbytery), *eight days before* the Presbytery appointed the second administrative commission as a replacement Session to exercise all powers of the elected Session, the Court of Appeals simply concluded that there was no longer a contest between the two Sessions, one insurgent and one not.

The court then took it upon itself to interpret two express provisions of the *Book of Order* governing the control over a Session by the Presbytery and the use and control of a local Presbyterian church's property. In effect, the court "read" those sections right out of the *Book of Order* denying them any meaning or effect (A-13). It did this by objecting to their editorial location (A-13) or by finding that they should be "discounted" by reason of other provisions elsewhere in the Book relating to spiritual concerns of the Session (A-14).

If disputes concerning doctrine and practice of hierarchical churches can thus be readily side-stepped by the action of a local church in withdrawing from a denomination while proceedings are pending before a high judicatory of the denomination, then the teachings of *Serbian Orthodox Diocese* and *Jones v. Wolf* can be mocked by the practice of self-help, hardly a neutral principle of law.

The Court of Appeals explained this unusual procedure thusly:

> "The Presbytery had not yet appointed a commission to replace the church Session and plaintiffs had terminated their relations with the Presbytery and refused to recognize its authority. *Thus, judicial resolution of this property dispute will not cause the court to intrude into the religious area* because it is not required to decide which of two competing bodies is the lawful Session with authority to control the property." (Emphasis supplied)

Thus, the eight-day interval before the second commission reported was to become the decisive factor in the court's holding.

Obviously, such an anomalous basis for judicial decision, substituting questionable self-help of the seceders for the intra-church procedures they were committed to follow, cannot possibly comport with constitutional observance of First Amendment protections for hierarchical religious denominations.

B. Assuming *Arguendo* The Dispute To Be Simply One Over Title To Property, The Court Below Failed To Proceed Properly Under Neutral Principles Of Law Approaches.

In *Jones v. Wolf*, this Court announced that the neutral principles approach calls for "settling a local church property dispute on the basis of the language of the deeds, the terms of the local church charters, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. . . ." (443 U.S. 595, 669)

> "If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must refer to the resolution of the doctrinal issue by the authoritative ecclesiastical body. *Serbian Orthodox Diocese*, 426 U.S. at 709, 49 L.Ed.2d 151. . . ."
>
> [443 U.S. 595, 604]

The Court of Appeals weighed the four types of documents suggested in *Jones v. Wolf*, i.e., the deeds of conveyance, the local church charter, the corporate statutes and the Presbyterian *Book of Order*. It concluded that the deeds conveyed legal title to the non-profit cor-

poration, found that the charter and statutes were not strongly dispositive and concluded that the provisions of the Presbyterian constitution were not legally cognizable provisions for a variety of irrelevant reasons, such as: absence of express trust language, claims that sections of the *Book of Order* dealing with the use and control of church properties "are located outside of the Property Section" of the *Book of Order*, and that other sections of the *Book of Order* ascribe to the Session purely spiritual power (A-13).

The Court gave no consideration to whether principles of contract law could apply to a local church, the members of which for almost 200 years have accepted the Presbyterian doctrines, governance, ritual and worship as contained in the *Book of Order* nor did the Court consider as a neutral principle the type of arrangement referred to in *Jones*:

> "And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form."
>
> [443 U.S. 606]

The finding of the Court of Appeals that the non-profit corporation held title to First Church property was irrelevant and ignored the nature of "church." That dry legalism called the corporation or its trustee board, of course, was the legal title-holder but not the "church" as understood in the faith, nor did it possess the beneficial ownership of the property. The local church consisted of the members and Sessions which, from time to time, accepted the Presbyterian doctrines, governance, ritual and forms of worship which were at the heart of the "church." Deciding that the non-profit corporation had legal title to the church property, did not and could not decide which of the two Sessions had the *control* and the beneficial *use* of the property of the local church.

More relevant to the neutral principles approach in that respect were Sections 7, 8 and 15 (Form of Government, Chapter XI of the *Book of Order*).[4] They were all in effect for many years *before the dispute erupted.* They were the governing neutral principles respecting to the *beneficial* ownership and use of the properties.

C. By Adopting Its Neutral Principles For The First Time In This Case, The Court Of Appeals Necessarily Applied The Same Retroactively And Unconstitutionally.

The court's confusion in attempting to apply the "neutral principles" approach in this case is pointedly demonstrated at the outset (A-9) where it referred to *Avitzur v. Avitzur*, 58 N.Y.2d 108, 114-115. Ignoring the *caveat* in *Jones v. Wolf*, 443 U.S. 595, 605(n), 61 L.Ed.2d 775, 786n (1979), regarding the unconstitutionality of a retroactive application of a neutral principles approach, the Court of Appeals said (A-9):

> "The neutral principles of law analysis has not been explicitly adopted by this state, although we applied the rule in *Avitzur v. Avitzur* (58 N.Y.2d 108, 114-115, *cert. den.*, ... U.S. ..... [civil court may enforce the secular terms of a religious marriage contract (Ketubah) through application of ordinary principles of contract law]). We do so in this action. Applying that analysis, we determine that the property shall remain in the control of plaintiff First Church."

By acknowledging that the neutral principles approach had not been "explicitly adopted" in New York and stating "We do so in this action," the Court conceded that its promulgation of governing criteria was necessarily

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[4] The provisions of the *Book of Order* here involved differ from those considered in *Presbyterian Church in the United States, etc. v. Blue Hull Mem. Presbyterian Church* and *Jones v. Wolf*, which cases involved a different Presbyterian denomination.

retroactive. The weak reference to *Avitzur* as a possible precedent is not enough to avoid the vice of retroactivity, particularly since the court carefully avoided relying on *Avitzur* as a prior adoption. In a state, such as New York, which has previously followed the established doctrine of judicial deference to the decisions of judicatories of a hierarchical church, the retroactive adoption of the neutral principles approach necessarily violates the First Amendment guarantee of free exercise rights.

D. The Injunction Against The Hierarchical Denomination And Its Presbytery Is A Patent Violation Of The First Amendment.

In *Walz v. Tax Commission of New York*, 397 U.S. 664 (1970), this Court summarized First Amendment guarantees as follows:

> "The general principle deducible from the First Amendment and all that has been said by this Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion."
>
> [397 U.S. 666]

The injunction ordered by the Court of Appeals prohibiting the United Presbyterian Church, its Presbytery and Commission from exercising the powers expressly given to them in the church constitution to replace the dissident Session with an administrative commission having exclusive authority over the local property, is manifestly an interference with the free exercise of religion.

The court below did not question the hierarchical characteristic of the denomination and Presbytery, but it seemed to disapprove of that form of free exercise of religion saying, "by supporting the hierarchical polity over

other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion. . . ." (A-11) This unprecedented doctrine would call for rejection of *Watson* and its progeny up to and including *Jones v. Wolf.*

To say that religion may be practiced freely, but that a hierarchical religious denomination may not be protected by its constitution in regard to the use and control of property of constituent local churches, is no guarantee of free exercise of religion at all.

CONCLUSION

For the foregoing reasons, Amicus Curiae respectfully urges this Court to grant the writ of certiorari and to reverse the decision of the Court of Appeals of New York.

Respectfully submitted,

SAMUEL W. WITWER, SR.
SAMUEL W. WITWER, JR.
JOHN D. HASTINGS
125 South Wacker Drive
Suite 2700
Chicago, Illinois 60606
(312) 332-6000

Attorneys for Amicus Curiae

Of Counsel:

WITWER, MORAN, BURLAGE & WITWER
125 South Wacker Drive, Suite 2700
Chicago, Illinois 60606
(312) 332-6000